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Counsel for Appealing Parties Identified Below

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re

Chapter 11

LEHMAN BROTHERS HOLDINGS INC., *et al.*,

Case No.08-13555 (SCC)

Debtors.

Jointly Administered

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**DESIGNATION OF ITEMS TO BE INCLUDED
IN THE RECORD ON APPEAL AND STATEMENT OF ISSUES ON APPEAL**

Pursuant to Rules 8006 of the Federal Rules of Bankruptcy Procedure, the Claimants¹ hereby submit their statement of issues to be presented and their designation of the items to be included in the record on appeal of the Bankruptcy Court's *Order Sustaining Omnibus Objections and Reclassifying Claims for Restricted Stock Units and Contingent Stock Awards* [Dkt. # 46853] entered November 7, 2014 in the above-captioned case, including all judgments, decrees, decisions, rulings and/or opinions that merged into or became a part of the Order on which the Order was based.

¹ The Claimants are: Jennifer Adler, Ian Anderson, Jennifer Becker, Craig Benson, Paola Biraschi, Karen Brewer, William Broadbent, David Brooks, Guillemette Callies, Patrick Cremin, Michael Collier, Joseph D'Amadeo, John Dmuchowski, Nestor De Jesus, Steven Engel, Louise Goldberg, Michael Gran, Anshuman Goyal, Adrian Graves, Sandra Hahn-Colbert, Gregg Hawes, Nicholas Howard, Julian Iragorri, Harriet Chan King, Karen Krieger, Tal Lev Ari, Yeruchim Levilev, Sarah Lewis, Fabio Liotti, Patricia Luken, Lawrence McCarthy, Michael McCully, Hugh McGee, Michael Mullen (Estate of), Ian Neville, Thomas O'Sullivan, Helmut Olivier, Martin Patterson, Michael Petrucelli, Sandy Fleischman Richman, Barry Porter, Jack Rivkin, Alvaro Santodomingo, Christiane Schuster, Steven Schwab, Brian Seward, Ross Shapiro, Paul Shotton, Norman Siegel, Margaret Smith, Stephen Snelling, Gregg Somma, Andrea Sullivan, Milan Veleba, Pierluigi Volini, Jeffrey Wecker, Peter Ward, Colin S.A. Welch, Timothy Wilkinson and Judith Winchester.

Statement of Issues to be Presented on Appeal

1. Did the Bankruptcy Court err in sustaining Lehman Brothers Holdings Inc.'s ("LBHI" or "Lehman") fourteen Omnibus Objections (collectively, the "Omnibus Objections")² and subordinating under § 510(b) of the Bankruptcy Code the proofs of claim filed by Claimants based on RSUs and CSAs granted to them as a form of compensation?
2. Did the Bankruptcy Court err in holding that the RSUs and CSAs fall within the definitions of "equity security" and "security" under §§ 101(16) and 101(49) of the Bankruptcy Code, respectively?
3. Did the Bankruptcy Court err in determining that Claimants did not identify "a single characteristic" that distinguished the RSUs and CSAs from the stock options in *In re Enron Corp.*, 341 B.R. 141 (Bankr. S.D.N.Y. 2006) where Claimants provided testimony, declarations, documentary evidence and legal authority establishing that, unlike the stock options in *Enron*, Claimants made no investment decision relating to the RSUs and CSAs?
4. Did the Bankruptcy Court err in declining to consider why the RSUs and CSAs were not investment contracts or commonly known as a security within the definition of "security" under § 101(49)(A) of the Bankruptcy Code?

² The Omnibus Objections are: Debtors' Seventy-Third Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 13295]; Debtors' One Hundred Eighteenth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 15666]; Debtors' One Hundred Thirtieth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 16115]; Debtors' One Hundred Thirty-First Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 16116]; Debtors' One Hundred Thirty-Third Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 16530]; Debtors' One Hundred Thirty-Fourth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 16532]; Debtors' One Hundred Thirty-Fifth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 16808]; Debtors' One Hundred Seventy-Sixth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 19392]; Debtors' One Hundred Eighty-Fifth Omnibus Objection to Claims (Compound Claims) [ECF No. 19714]; Debtors' Two Hundred Seventh Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 20012]; Three Hundred Thirteenth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 28433]; Three Hundred Fourteenth Omnibus Objection to Claims (Late-Filed Claims) [ECF No. 28435]; Three Hundred Nineteenth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 28777]; and the Three Hundred Forty Seventh Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 30357].

5. Did the Bankruptcy Court err in refusing to consider recent federal Court of Appeals authority concluding that RSUs were not equity awards and are not commonly known as securities?

6. Did the Bankruptcy Court err in declining to consider whether the RSUs and CSAs were excluded from the definition of “security” by § 101(49)(B) of the Bankruptcy Code?

7. Did the Bankruptcy Court err in declining to consider the legislative history of § 510(b) of the Bankruptcy Code by stating Claimants “shouldn’t be using the legislative history [of § 510(b)] at all” where Claimants submitted evidence that claims for unpaid compensation arising from grants of unconverted RSUs and CSAs were beyond the scope of § 510(b) and the legislative history supported that reading of the statute?

8. Did the Bankruptcy Court err in holding participation by Claimants in the RSU/CSA compensation program that was subject to the terms of the Lehman Brothers Equity Award Program (the “Program”) was voluntary where Claimants submitted uncontroverted testimony, declarations and documentary evidence showing (i) Claimants were required to participate in the Program by virtue of their employment with Lehman; (ii) Claimants could not elect to receive cash instead of RSU or CSA awards; (iii) the terms of the Program could not be changed or varied without approval of Lehman’s Compensation Committee; (iv) the Program was imposed upon employees firm-wide by Lehman acting unilaterally; (v) Claimants had no decisions to make under the Program; (vi) there was no election or enrollment forms for Claimants to complete; (vii) Claimants could not choose or elect to participate and had no say in the percentage of their compensation they would receive in RSUs or CSAs; and (viii) Claimants could not negotiate or vary the terms of the Program.

9. Did the Bankruptcy Court err in overlooking uncontroverted testimony, declarations and documentary evidence established that (i) Claimants did not view the RSUs and CSAs as constituting equity before LBHI shares were issued; (ii) LBHI did not consider Claimants stockholders until they became record holders of LBHI stock and that Claimants' rights as grantees of RSUs and CSAs were no better than those of a general creditor; (iii) both pre-petition through LBHI's RSU Trust and post-petition through LBHI's pre-populated proofs of claim given to Claimants, LBHI considered RSU and CSA claims as unsecured contract claims, not equity; and (iv) there was no voting of stock by holders of RSUs and CSAs and no documentary evidence showing solicitation of proxies or any procedure for permitting the exercise of voting rights by Claimants.

10. Did the Bankruptcy Court err in concluding the purported purpose of the Program was to provide Claimants with a "sense of ownership" and Claimants were motivated to "secure the firm's success" where the Bankruptcy Court's conclusion disregarded Claimants' testimony and declarations and was based only on Lehman's own Program documents, with no supporting testimony other than arguments made by Lehman's attorneys who were not competent to offer such testimony?

11. Did the Bankruptcy Court err in declining to consider tax implications associated with the grant, delivery and conversion of the RSUs and CSAs, including that (i) the income reported to tax authorities by Claimants was only after the RSUs and CSAs converted to LBHI stock; (ii) the tax withheld was calculated at ordinary income rates, not capital gains; (iii) an I.R.C. § 83(b) election was not available for RSUs and CSAs; (iv) upon conversion of the RSUs and CSAs to LBHI stock, LBHI claimed an income tax deduction as compensation expense; and

(v) the dividend equivalent amounts that were reinvested as additional RSUs and CSAs were also treated as tax-deductible compensation.

Designation of Items for Record on Appeal

Docket No.	Description
13295	Debtors' Seventy-Third Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests)
15666	Debtors' One Hundred Eighteenth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests)
16115	Debtors' One Hundred Thirtieth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests)
16116	Debtors' One Hundred Thirty-First Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests)
16530	Debtors' One Hundred Thirty-Third Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests)
16532	Debtors' One Hundred Thirty-Fourth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests)
16808	Debtors' One Hundred Thirty-Fifth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests)
19392	Debtors' One Hundred Seventy-Sixth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests)
19714	Debtors' One Hundred Eighty-Fifth Omnibus Objection to Claims (Compound Claims)
20012	Debtors' Two Hundred Seventh Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests)
23470	Debtors' Omnibus Reply to Responses to Debtors' One Hundred Eighteenth, One Hundred Thirtieth, One Hundred Thirty-First, One Hundred Thirty-Third, One Hundred Thirty-Fourth, One Hundred Thirty-Fifth, One Hundred Seventy-Sixth, and Two Hundred and Seventh Omnibus Objections to Claims (to Reclassify Proofs of Claims as Equity Interests)
23741	Transcript regarding hearing held on 12/21/2011
28433	Three Hundred Thirteenth Omnibus Objection to Claims (to Reclassify Proofs of

	Claim as Equity Interests)
28434	Transcript regarding hearing held on 05/31/2012
28435	Three Hundred Fourteenth Omnibus Objection to Claims (Late-Filed Claims)
28777	Three Hundred Nineteenth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests)
30357	Three Hundred Forty Seventh Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests)
40263	Order Approving Stipulation of Facts Regarding RSUs and CSAs, Including the Tax and Accounting Treatment of RSUs and CSAs
40263-1	Stipulation of Facts Regarding RSUs and CSAs, Including the Tax and Accounting Treatment of RSUs and CSAs, With Respect to Debtors' Omnibus Objections to Proofs of Claim
42176	Stipulation & Order Establishing Procedures for an Evidentiary Hearing in Connection with Omnibus Objections to Reclassify Proofs of Claim as Equity Interests
42348	Memorandum in Opposition to Debtors' Fourteen Omnibus Objections Seeking to Reclassify Compensation Claims as Equity, or Alternatively, to Subordinate Claims Pursuant to Section 510(b) of the Bankruptcy Code
42386	Declaration of Stephanie Stiefel
42387	Declaration of Judith Ann Kenney
42388	Declaration of Henry Ramallo
42404	Memorandum of Law in Support of Debtors' Seventy-Third, One Hundred Eighteenth, One Hundred Thirtieth, One Hundred Thirty-First, One Hundred Thirty-Third, One Hundred Thirty-Fourth, One Hundred Thirty-Fifth, One Hundred Seventy-Sixth, and Two Hundred Seventh Omnibus Objections to Claims (to Reclassify Proofs of Claim as Equity Interests)
	Declaration of Ralph I. Miller in Support of Debtors' Seventy-Third, One Hundred Eighteenth, One Hundred Thirtieth, One Hundred Thirty-First, One Hundred Thirty-Third, One Hundred Thirty-Fourth, One Hundred Thirty-Fifth, One Hundred Seventy-Sixth, and Two Hundred Seventh Omnibus Objections to Claims (to Reclassify Proofs of Claim as Equity Interests) ³

³ Claimants are unable to locate the docket number for the January 28, 2014 Declaration of Ralph I Miller in Support of Debtors' Omnibus Objections to Claims. The Declaration should be in the docket adjoined to the Memorandum

43418	Memorandum of Law in Opposition to Claimants' Opening Memoranda Regarding Debtors' Seventy-Third, One Hundred Eighteenth, One Hundred Thirtieth, One Hundred Thirty-First, One Hundred Thirty-Third, One Hundred Thirty-Fourth, One Hundred Thirty-Fifth, One Hundred Seventy-Sixth, and Two Hundred Seventh Omnibus Objections to Claims (to Reclassify Proofs of Claim as Equity Interests)
43420	Declaration of John Tuosto
43421	Supplemental Declaration of Ralph I. Miller
43432	Declaration of Roger Saks
43433	Affidavit of Riccardo Banchetti
43434	Affidavit of Madelyn Antoncic, Ph.D.
43435	Affidavit of Michele Bareggi
43436	Affidavit of Timothy A. Burke
43437	Affidavit of Nachiketa Das
43438	Affidavit of Philippe Dufournier
43439	Affidavit of Peter Hornick
43440	Affidavit of Michael Lawsky
43441	Affidavit of Richard Noble
43442	Affidavit of Anke Parr
43443	Affidavit of Vincent Primiano
43444	Affidavit of Jonathan Sebiri
43445	Affidavit of Charles Spero
43446	Affidavit of Gordon Sweely
43447	Memorandum in Further Opposition to Debtors' Fourteen Omnibus Objections

of Law in Support of Debtors' Omnibus Objections to Claims [Dkt. No. 42404]. A copy of the Mr. Miller's Declaration is attached hereto as Exhibit A to be made part of the designated items for appeal.

	Seeking to Reclassify Compensation Claims as Equity, or Alternatively, to Subordinate Claims Pursuant to § 510(b) of the Bankruptcy Code
43448	Affidavit of Giancarlo Saronne
43457	Declaration of Darian J. Cohen
43460	Declaration of Lars P. Jacobson
43450	Declaration of Paola Biraschi
43451	Declaration of Nestor DeJesus
43452	Declaration of Donald Boughram
43453	Declaration of Joseph D'Amadeo
43454	Declaration of Steven Engel
43455	Declaration of Julian Iragorri
43456	Declaration of Michael Gran
43458	Declaration of Harriet Chan King
43459	Declaration of Virgilio Casuple
43461	Declaration of Mary E. Langevin
43463	Declaration of Karen M. Simon Krieger
43464	Declaration of Amit K. Sarkar
43465	Declaration of Lawrence H. Morgan
43466	Declaration of Lawrence Nicole
43467	Declaration of Brian Monahan
43468	Declaration of Michael McCully
43469	Declaration of Helmut Olivier
43470	Declaration of Michael Petrucelli
43471	Declaration of Barry Porter

43472	Declaration of Sandy Fleischman Richman
43473	Declaration of Ross Shapiro
43474	Declaration of Gregg Somma
43475	Declaration of Wendy M. Uvino
43476	Declaration of Andrew Wideman
43477	Declaration of Christian Stevens
43763	Joint Stipulation Regarding Authenticity and Admissibility of Documents and Designated Deposition Testimony in Connection with Debtors' Omnibus Objections to Proofs of Claim
43763-3	Exhibit List for Represented Compensation Claimants (Excluding Neuberger Berman Claimants)
43763-4	LBHI's Proposed Exhibit List Pursuant to ¶ 13 of the Evidentiary Hearing Procedures
43875	Declaration of Nicholas P. Howard
43969	Transcript regarding hearing on 04/01/2014
	Transcript regarding hearing on 04/02/2014 ⁴
43970	Transcript regarding hearing held on 04/03/2014
46797	Memorandum Decision Sustaining Omnibus Objections to Claims
43970	Transcript regarding hearing held on 04/03/2014
46797	Memorandum Decision Sustaining Omnibus Objections to Claims
46853	Order Sustaining Omnibus Objections and Reclassifying Claims for Restricted Stock Units and Contingent Stock Awards
47003	Claimants' Notice of Appeal

⁴ Claimants are unable to locate the docket number regarding the hearing held before the Court on 04/02/2014, however, excerpts from the 04/02/2014 hearing are cited throughout the Court's *Order Sustaining Omnibus Objections and Reclassifying Claims for Restricted Stock Units and Contingent Stock Awards* [Dkt. # 46853]. A copy of the 04/02/2014 transcript is attached hereto as Exhibit B to be made part of the designated items for appeal.

Claim No.	Description
23900	Proof of Claim for Michael Gran

Dated: New York, New York
December 5, 2014

STAMELL & SCHAGER, LLP

By: /s/ Richard J. Schager, Jr.

Richard J. Schager, Jr.

Andrew R. Goldenberg

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Counsel to Claimants: Jennifer Adler, Ian Anderson, Jennifer Becker, Craig Benson, Paola Biraschi, Karen Brewer, William Broadbent, David Brooks, Guillemette Callies, Patrick Cremin, Michael Collier, Joseph D'Amadeo, John Dmuchowski, Nestor De Jesus, Steven Engel, Louise Goldberg, Michael Gran, Anshuman Goyal, Adrian Graves, Sandra Hahn-Colbert, Gregg Hawes, Nicholas Howard, Julian Iraborri, Harriet Chan King, Karen Krieger, Tal Lev Ari, Yeruchim Levilev, Sarah Lewis, Fabio Liotti, Patricia Luken, Lawrence McCarthy, Michael McCully, Hugh McGee, Michael Mullen (Estate of), Ian Neville, Thomas O'Sullivan, Helmut Olivier, Martin Patterson, Michael Petrucelli, Sandy Fleischman Richman, Barry Porter, Jack Rivkin, Alvaro Santodomingo, Christiane Schuster, Steven Schwab, Brian Seward, Ross Shapiro, Paul Shotton, Norman Siegel, Margaret Smith, Stephen Snelling, Gregg Somma, Andrea Sullivan, Milan Veleba, Pierluigi Volini, Jeffrey Wecker, Peter Ward, Colin S.A. Welch, Timothy Wilkinson and Judith Winchester

EXHIBIT A

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Ralph I. Miller
Robert J. Lemons

Attorneys for Lehman Brothers Holdings Inc.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re	: Chapter 11 Case No.
	:
LEHMAN BROTHERS HOLDINGS INC., et al.,	: 08-13555 (JMP)
	:
Debtors.	: (Jointly Administered)
-----X	

**DECLARATION OF RALPH I. MILLER IN SUPPORT OF
MEMORANDUM OF LAW IN SUPPORT OF DEBTORS'
SEVENTY-THIRD, ONE HUNDRED EIGHTEENTH,
ONE HUNDRED THIRTIETH, ONE HUNDRED THIRTY-FIRST,
ONE HUNDRED THIRTY-THIRD, ONE HUNDRED THIRTY-FOURTH,
ONE HUNDRED THIRTY-FIFTH, ONE HUNDRED SEVENTY-SIXTH AND
TWO HUNDRED SEVENTH OMNIBUS OBJECTIONS TO CLAIMS
(TO RECLASSIFY PROOFS OF CLAIM AS EQUITY INTERESTS)**

I, Ralph I. Miller, under penalty of perjury, declare that the foregoing is true and correct to the best of my knowledge, information, and belief:

1. I am an attorney admitted to practice before this Court and a partner of Weil, Gotshal & Manges LLP, attorneys for Lehman Brothers Holdings Inc. ("LBHI"), as Plan Administrator for LBHI and certain of its affiliates under the *Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors* (the "Plan").¹

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

2. I submit this declaration in support of the Memorandum of Law in Support of Debtors' Seventy-Third, One Hundred Eighteenth, One Hundred Thirtieth, One Hundred Thirty-First, One Hundred Thirty-Third, One Hundred Thirty-Fourth, One Hundred Thirty-Fifth, One Hundred Seventy-Sixth, and Two Hundred Seventh Omnibus Objections to Claims (To Reclassify Proofs of Claim as Equity Interests) dated January 28, 2014 (the "Motion") and to provide the Court with true and correct copies of certain documents filed with the Court in support of the Motion.

3. Attached hereto are true and correct copies of the following documents:

- Exhibit A: Order Approving Stipulation of Facts Regarding RSUs and CSAs, Including the Tax and Accounting Treatment of RSUs and CSAs, dated October 2, 2013 (with attached exhibits), [ECF No. 40263];
- Exhibit B: Hearing Transcript, *In re Lehman Bros. Holdings, Inc.*, No. 08-13555-jmp (Bankr. S.D.N.Y. Dec. 21, 2011) [ECF No. 23741];
- Exhibit C: A brochure entitled, "Lehman Brothers 2005 Equity Award Program For Bonus-Eligible and Production-Based Employees," bearing Bates numbers LEH-RSU 0022573 – 0022584;
- Exhibit D: Excerpts from LBHI's 2005 Form 10-K for Fiscal Year ended November 30, 2005, dated February 13, 2006 and bearing beginning Bates number LEH-RSU 0005994;
- Exhibit E: A document entitled, "Lehman Brothers Holdings Inc. Employee Incentive Plan as amended through November 8, 2007," bearing Bates numbers LEH-RSU 0000254-0000262; and
- Exhibit F: Letter from Karen M. Simon Kreiger to Honorable James M. Peck, Robert J. Lemons, Esq., and Mark Bernstein, Esq., dated March 29, 2013 re: Participation in RSU Claims Discovery in Connection with Omnibus Objections to Reclassify Proofs of Claim as Equity Interest: Karen M. Simon Krieger – Claim Number: 18087 in the amount of \$164,319.52, sent in response to LBHI's Discovery Requests (without production enclosures).

4. I declare under penalty of perjury that the foregoing is true and correct.

Executed On: January 28, 2014


Ralph I. Miller

Exhibit A

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re : **Chapter 11 Case No.**
:
LEHMAN BROTHERS HOLDINGS INC., et al., : **08-13555 (JMP)**
:
Debtors. : **(Jointly Administered)**
-----X

**ORDER APPROVING STIPULATION OF FACTS REGARDING RSUs AND
CSAs, INCLUDING THE TAX AND ACCOUNTING TREATMENT OF RSUs AND CSAs**

Upon the Notice of Presentment of the Stipulation of Facts Regarding RSUs and CSAs, including the Tax and Accounting Treatment of RSUs and CSAs, dated September 13, 2013 (the “Stipulation”),¹ a copy of which is attached hereto as Exhibit 1, seeking approval of the Stipulation which was negotiated by counsel for numerous Participants as that term is defined in paragraph 3(b) of the Court’s Second Amended Order Establishing Discovery Procedures, dated February 13, 2013 [ECF No. 34583], on the one hand, and counsel for Lehman Brothers Holdings Inc. (“LBHI”), in its capacity as Plan Administrator under the *Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors* for certain entities in the above-referenced chapter 11 cases (collectively, the “Chapter 11 Estates”), on the other hand; and the Stipulation having been executed by LBHI and the various Participants identified in the Stipulation (together with LBHI, the “Parties”); and due and proper notice of the Stipulation having been provided to all Claimants subject to the Omnibus Objections; and the Court having found and determined that approval of the Stipulation is in the best interests of the Chapter 11 Estates, their creditors; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Stipulation is APPROVED; and it is further

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Stipulation.

ORDERED that the facts described in the Stipulation shall be binding in all respects as to all Claimants who have received due and proper notice of the Stipulation provided, however, that any individual Claimant that is able to demonstrate prejudice by virtue of the approval of this Stipulation will be permitted to argue that the Stipulation does not apply to such Claimant; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York
October 2, 2013



/s/ James M. Peck

Honorable James M. Peck
United States Bankruptcy Judge

STIPULATION OF FACTS

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re

Chapter 11 Case No.

LEHMAN BROTHERS HOLDINGS INC., et al.,

08-13555 (JMP)

Debtors.

Jointly Administered

-----X

**STIPULATION OF FACTS REGARDING RSUs AND CSAs,
INCLUDING THE TAX AND ACCOUNTING TREATMENT OF RSUs AND CSAs,
WITH RESPECT TO DEBTORS' OMNIBUS OBJECTIONS TO PROOFS OF CLAIM**

RECITALS

A. Between December 7, 2010 and August 24, 2012, Lehman Brothers Holdings Inc. (“LBHI”) and certain affiliated Debtors, as debtors and debtors in possession herein (collectively, the “Debtors”), and LBHI as Plan Administrator (the “Plan Administrator”), under the *Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors* (the “Plan”) for certain entities in the above-referenced chapter 11 cases, filed fourteen Omnibus Objections to Proofs of Claims for bonus or commission compensation during the years 2003 and 2008 as to which many claimants were granted Restricted Stock Units and Contingent Stock Awards (collectively, the “Omnibus Objections”).¹ The Omnibus Objections

¹ The Omnibus Objections are: Debtors' Seventy-Third Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 13295]; Debtors' One Hundred Eighteenth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 15666]; Debtors' One Hundred Thirtieth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 16115]; Debtors' One Hundred Thirty-First Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 16116]; Debtors' One Hundred Thirty-Third Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 16530]; Debtors' One Hundred Thirty-Fourth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 16532]; Debtors' One Hundred Thirty-Fifth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 16808]; Debtors' One Hundred Seventy-Sixth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 19392]; Debtors' One Hundred Eighty-Fifth Omnibus Objection to Claims (Compound Claims) [ECF No. 19714]; Debtors' Two Hundred

seek to reclassify these claims as equity interests and/or subordinate them to the claims of general unsecured creditors. The claimants who oppose the Omnibus Objections and still have claims pending on the Omnibus Objections are referred to herein as the “Claimants” and their claims, to the extent subject to the Omnibus Objections, are referred to herein as the “Claims.”

B. On August 27, 2012, the Court entered an Order Establishing Discovery Procedures (ECF No. 30421), amendments to which were entered on November 28, 2012 (ECF No. 32386) and February 13, 2013 (ECF No. 34583) (collectively, the “Discovery Procedures Order”). The Claimants who are party to this stipulation are “Participants” as defined in paragraph 3(b) of the Discovery Procedures Order.

C. Section 11 of the Discovery Procedures Order provides for a Rule 30(b)(6) deposition by Participants of LBHI.² A notice for the Rule 30(b)(6) deposition was served on April 22, 2013 (the “Rule 30(b)(6) Notice”). LBHI served a response to the Rule 30(b)(6) Notice on August 16, 2013. The matters set out under the Rule 30(b)(6) Notice on which testimony is sought primarily relate to the tax and accounting treatment of the RSU/CSA Awards (defined below).

D. The parties hereto have agreed to stipulate to the facts set forth herein in lieu of examination on these subjects at the Rule 30(b)(6) deposition (the “Stipulation”). The parties agree that upon the execution of the Stipulation, the sole topics that will be covered at the Rule

Seventh Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 20012]; Three Hundred Thirteenth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 28433]; Three Hundred Fourteenth Omnibus Objection to Claims (Late-Filed Claims) [ECF No. 28435]; Three Hundred Nineteenth Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 28777]; and the Three Hundred Forty Seventh Omnibus Objection to Claims (to Reclassify Proofs of Claim as Equity Interests) [ECF No. 30357].

² Federal Rule of Civil Procedure 30(b)(6) allows a party to notice the deposition of a public or private corporation, a partnership, an association, a governmental agency, or other entity, and the entity is then to designate an agent or other person to testify about information known or reasonably available to the organization.

30(b)(6) deposition or addressed in a separate stipulation will be the treatment of RSUs and CSAs by Lehman for balance sheet purposes and/or in Lehman's financial statements (Subject for Examination No. 1(v) and No. 3), and the RSU and CSA claims that were included in the settlement of inter-company claims between LBHI and LBI on or around February 21, 2013 (Subject for Examination No. 6). The Stipulation and the facts set forth herein are without prejudice to, and shall not preclude any party from presenting, any other factual points or any legal arguments under applicable state or federal law in briefing or other papers in support of or opposition to the Claims.

E. While the Stipulation identifies facts that are uncontested by the parties and the parties have agreed that the Court may consider as evidence the facts set forth in this Stipulation and all documents attached to this Stipulation in connection with the Omnibus Objections, the Stipulation does not constitute an admission that these facts or documents are material or relevant to the resolution of the Omnibus Objections. Thus, LBHI and the Participants do not waive, and expressly reserve, any objection to the relevance or weight of the facts cited herein.

STIPULATED FACTS

1. The Claims for compensation as to which Restricted Stock Units ("RSUs") and/or Conditional Stock Awards ("CSAs") were granted pertain to the years 2003-2008. The Claims for compensation as to which no Restricted Stock Units or Conditional Stock Awards were granted pertain to the 2008 fiscal year (All Restricted Stock Units and Conditional Stock Awards concerning the Claims are referred to herein collectively as the "RSUs /CSAs" and the RSUs/CSAs that are the subject to the Claims are referred to herein as the "Claimants' RSUs/CSAs"). For years 2003-2008, bonus eligible (salaried) and production-based (commissioned) Lehman employees in the United States were granted the RSUs, and for

overseas employees the CSAs, as a portion of the total compensation for services they performed as employees (the “RSU/CSA Award”).

2. The 2008 “Guide to Working at Lehman Brothers” (“the U.S. Employee Handbook”) stated:

At the Firm’s option, a portion of [an employee’s] total compensation (combined base salary, bonus and other compensation) may be payable in the form of conditional equity awards (restricted stock units (“RSUs”), stock options, or other equity awards) pursuant to the Firm’s Equity Award Program.

LEH-RSU 0000300.³ The Employee Handbook for UK Employees similarly stated:

At the Firm’s discretion a portion of your total compensation under any discretionary bonus award may be made in the form of Contingent Stock Awards (CSAs) under the appropriate Lehman Brothers’ Stock Award Program.

LEH-RSU 0001552. Moreover, in cases where Lehman had an employment contract with a Claimant, those contracts provide that at Lehman’s discretion, a portion of the employee’s compensation may be or will be paid in RSUs or CSAs. For example, one contract states:

At the Firm’s option, a portion of your total compensation (combined base salary, bonus, and other compensation) may be payable in the form of restricted stock units pursuant to the Firm’s employee Stock Award Program.

Exhibit 1 (LS CLMT-RSU 5-6) (sample contract with a Claimant with identifying information redacted). Another contract states:

At the Firm’s discretion, a portion of your total 2007, 2008 and future years’ total compensation (combined base salary, bonus and other compensation) will be payable in conditional equity awards (restricted stock units and/or other equity awards) pursuant to the Firm’s employee equity award program as then in effect.

³ Documents that are not referenced by Exhibit number have not been attached to the Stipulation. However, copies will be provided to the Court upon request.

Exhibit 2 (S&S CLMT-RSU 000296-97) (sample contract with a Claimant with identifying information redacted).

3. LBHI's Consolidated Financial Statement for FY 2003, contained in its 2003 Annual Report on SEC Form 10-K, stated that "[e]ligible employees receive RSUs as a portion of their total compensation in lieu of cash," that "[t]here is no further cost to employees associated with the RSU awards," and that the awards "generally convert to unrestricted freely transferable Common Stock five years from the grant date."⁴ LBHI's Financial Statements for FY 2004 through FY 2007 similarly stated that "[e]ligible employees receive RSUs, in lieu of cash, as a portion of their total compensation," that "[t]here is no further cost to employees associated with RSU awards," and that the awards "convert to unrestricted freely-transferable common stock five years from the grant date."⁵

4. Attached as Exhibit 3 (LEH-RSU 0015888-15902) is a true and correct copy of a brochure entitled "2003 Equity Award Program [for] Senior Vice President," which describes the Program for 2003, including the issuance of and the tax treatment of RSUs and Stock Options (the "2003 U.S. SVP Brochure"). The descriptions in this Brochure summarized below were not materially changed during the years 2003 through 2008.

5. A grant of an RSU or CSA "represent[ed] a conditional right" for an employee "to receive one share of Lehman Brothers common stock five years after the RSU [or CSA] is granted, assuming continued employment with the Firm," subject to the terms of the

⁴ LEH-RSU 0005539-0005634, 0006434-0006487 (LBHI 2003 Annual Report) at LEH-RSU 0005603 (Consl. Fin. Stmts., Note 15 at p. 95).

⁵ LEH-RSU 0005635-0005671, 0006279-0006432 (LBHI 2004 Annual Report) at LEH-RSU 0006396 (Consl. Fin. Stmts., Note 16 at p. 116); LEH-RSU 0005672-0005697, 0005994-0006133 (LBHI 2005 Annual Report) at LEH-RSU 0006097 (Consl. Fin. Stmts., Note 14 at p. 102); LEH-RSU 0005698-0005719, 6135-6277 (LBHI 2006 Annual Report) at LEH-RSU 0006244 (Consl. Fin. Stmts., Note 15 at p. 109); LEH-RSU 0005832-0005992 (LBHI 2007 Annual Report) at LEH-RSU 0005958 (Consl. Fin. Stmts., Note 12 at p. 125).

Lehman Brothers Equity Award Program (the “Program”). *See* Exhibit 3 (2003 U.S. SVP Brochure) at 1. The date that an RSU or CSA is granted is referred to herein as the “Grant Date.” The date that an RSU or CSA converts to LBHI Common Stock is referred to herein as the “Conversion/Issuance Date.” The Conversion/Issuance Date was a fixed date that Lehman employees could neither accelerate nor defer. None of the Participants’ RSUs or CSAs (other than RSUs issued as Neuberger Berman retention bonuses) had reached their Conversion/Issuance Date at the date this proceeding was commenced.

6. The 2003 U.S. SVP Brochure states:

Each RSU represents the conditional right to receive one share of Lehman Brothers common stock five years after the RSU is granted, assuming continued employment with the Firm. On November 30, 2008, the restriction period will end, and you will be entitled to receive one share of Lehman Brothers common stock for each vested RSU you hold at that time. Once your RSUs convert to common stock, they become freely tradable. The RSUs cannot be sold, traded, pledged, or assigned before conversion.

Id. at 1.

7. The conversion of RSUs and CSAs and receipt of LBHI common stock (other than RSUs issued as Neuberger Berman retention bonuses) was subject to the RSU/CSA grantee’s fulfillment of certain employment-related conditions during this five-year period. Lehman employees were advised that if these conditions were not fulfilled, the RSUs or CSAs would be forfeited and canceled. Attached as Exhibit 4 (LEH-RSU 0015051-54), Exhibit 5 (LEH-RSU 0014329-32), Exhibit 6 (LEH-RSU 0000108-111), Exhibit 7 (LEH-RSU 0017757-61), Exhibit 8 (LEH-RSU 0000278-82), Exhibit 9 (LEH-RSU 0007228-31), Exhibit 10 (LEH-RSU 0001054-57), Exhibit 11 (LEH-RSU 0001082-85), Exhibit 12 (LEH-RSU 0019153-58) and Exhibit 13 (LEH-RSU 0000263-68) are true and correct copies of sample grant agreements from 2003 through 2007, identifying the employment-related conditions applicable to those grants.

8. LBHI has conducted a review of its records and has not found evidence that the RSUs or CSAs granted to the Participants during the years 2003-2008 have been forfeited, as reflected on the Compensation Summaries that LBHI produced to the Participants in its Initial Disclosures pursuant to paragraph 4(b) of the Discovery Procedures Order.

9. The U.S. SVP Brochure also noted that “[u]pon conversion to common stock, the fair market value of the shares [would] be taxed as employment income based on the closing price of Lehman Brothers common stock on the conversion date.” *Id.* at 11. The U.S. SVP Brochure also states that “[w]hen [stock] options are exercised, the difference between the Fair Market Value on the exercise date and the option exercise price will be taxed as employment income.” (*id.* at 11).

10. The terms of the Program were approved by the Compensation and Benefits Committee (the “Compensation Committee”) of LBHI’s Board of Directors (the “Board of Directors”), including any percentage or amount of the employees’ compensation that would be paid in RSUs or CSAs (which varied from year to year) and the Grant Date for the related awards. Employees could not elect to receive cash instead of the awards, and the terms of the Program could not be changed or varied without approval of the Compensation Committee. Various grant agreements from 2003 through 2007 with respect to RSUs state, “[t]he validity, construction, interpretation, administration, and effect of the Plan, and of its rules and regulations, and rights relating to the Plan and to this Agreement, shall be governed by the substantive laws, but not the choice of law rules, of the State of Delaware.” *See. e.g.*, Exhibit 4 at LEH-RSU 0015053; Exhibit 5 at LEH-RSU 0014331; Exhibit 6 at LEH-RSU 0000110; Exhibit 7 at LEH-RSU 0017660; Exhibit 8 at LEH-RSU 0000281. Various award letters from 2003 through 2007 with respect to CSAs state, “[t]he validity, construction, interpretation,

administration, and effect of the Plan and of its rules and regulations and rights relating to the Plan, and of this Letter and rights arising under it, shall be governed by the substantive laws, but not the choice of law rules, of the State of Delaware, United States of America.” *See, e.g.*, Exhibit 9 at LEH-RSU 0007230; Exhibit 10 at LEH-RSU 0001056; Exhibit 11 at LEH-RSU 0001084; Exhibit 12 at LEH-RSU 0019156; Exhibit 13 at LEH-RSU 0000266.

11. In a description of 2007 amendments to outstanding equity awards, dated November 15, 2007, Lehman explained to employees:

New tax rules under Internal Revenue Code Section 409A governing deferred compensation have recently come into effect which impact awards granted under the Firm’s Equity Award Program. In order to comply with these new tax rules, the Firm has made changes to equity awards including Restricted Stock Units (“RSUs”), Contingent Stock Awards (“CSAs”), Conditional Equity Awards (“CEAs”) granted from 2003 through the present and stock options granted from 2000 through the present.

These changes, which primarily impact the timing of delivery of shares under certain circumstances . . . have been made with a view to assuring compliance with these new tax rules while preserving the original terms of the awards to the fullest extent possible. If outstanding awards were not amended to comply with these rules, severe tax consequences – including excise taxes, penalties, and interest – could result to employees.

See LEH-RSU 0008108. Further down on the page, Lehman explained the RSU/CSA/CEA Amendments will “Clarify those types of bankruptcies which may result in ‘Bankruptcy Acceleration Events,’ generally resulting in the acceleration of delivery of shares.” *Id.*

12. Near the end of the years 2003 through 2008, LBHI announced to its bonus eligible (salaried) and production-based (commissioned) employees what portion, if any, of their compensation would be paid in RSUs/CSAs. From 2003 through 2007 the Grant Date occurred in late November or early December. In an email dated July 2, 2008, Lehman stated that changes to the Equity Award Program included “[g]ranting an equity award on July 1”

which was “meant to be an ‘advance’ against any full-year equity award [the employee] may receive as part of [his/her] 2008 total compensation.” *See* LEH-RSU 0014376-77.

13. During the years 2003 through 2008, any amount of compensation that was to be paid in RSUs and CSAs was communicated to employees via face-to-face communications, and the general terms for grants of such RSU/CSA Awards were communicated to employees firm-wide via face-to-face communications, conference calls, the online bonus system “LehmanLive” (the Firm’s internal computer network), and/or electronic mail. During each of these years, preprinted packets of information containing a “Dear Colleague” letter, a summary of the material terms, and a brochure were distributed to employees. Lehman employees were required to participate in the Program by virtue of their employment with Lehman and the implementation of Equity Award Programs by the Board. Thus, there were no election or enrollment forms for participation in the Program.

14. Near the end of each fiscal year 2003 through 2008, bonus-eligible (salaried) and production-based (commissioned) employees typically received a brochure with a schedule attached identifying any percentage and/or amount of an employee’s bonus or commissions that would be paid in RSUs and CSAs for those years, which was based on the level of compensation and corporate title held by the employee (the “Grid”). Attached as Exhibit 14 (LEH-RSU 0000927-942) is a true and correct copy of a brochure entitled, “Questions and Answers for Bonus-Eligible and Production-Based Employees,” dated July 1, 2008, which was distributed to employees in the United States (the “2008 RSU Q&A”). Exhibits B and C of the 2008 RSU Q&A (at LEH-RSU 000938-39) are examples of the Grid used for bonus-eligible and production-based employees, respectively. Overseas employees granted CSAs typically received a similar brochure, also attaching a Grid for salaried and production-based employees. Attached

as Exhibit 15 (LEH-RSU 0000911-926) is a true and correct copy of a brochure entitled, “Questions and Answers for Bonus-Eligible and Production-Based Employees,” dated July 1, 2008, which was distributed to employees overseas (the “2008 CSA Q&A”). Exhibits B and C of the 2008 CSA Q&A (LEH-RSU 000922-23) are examples for bonus-eligible and production-based employees.

15. The U.S. Employee Handbook states that employees were paid on a “total compensation” basis. *See* LEH-RSU 0000300. The U.S. Employee Handbook also states that, “Total compensation may include base salary, cash commissions, overtime, bonus payments, conditional equity awards (in accordance with the Lehman Brothers Equity Award Program), and other compensation.” *Id.* Typically, a salaried employee based in the United States was given at or near year-end a standard form document prepared by LBHI entitled “200_ Total Compensation Statement.” These statements set forth the employee’s total compensation for that year, which was stated to include a salary and bonus. The statements also identified any portion of the bonus to be paid in RSUs or CSAs. The following is an example of the information contained in a Total Compensation Statement issued for an employee in the United States during the years 2003 through 2008. The line items listed under “Compensation Type” were:

Annualized Salary	\$200,000
<u>Bonus</u>	<u>\$900,000</u>
TOTAL COMPENSATION	\$1,100,000

Lower on the page, the employees were provided with a “Payment Schedule” showing the amount of the bonus to be paid in RSUs. Continuing the example, the line items were:

Bonus	\$900,000
Less RSUs	<u>(\$235,000)</u>
Total Cash Payment (Before Taxes)	\$665,000

Attached as Exhibit 16 (S&S CLMT-RSU 000124) is a true and correct copy of a sample of a Total Compensation Statement (with identifying information redacted).

16. Salaried employees stationed overseas during the years 2003 through 2008 were provided the similar information in a “Total Compensation Statement,” but in a slightly different format. Those compensation statements contained a “Total Compensation Summary” with the following information:

	<u>GBP</u>
Paid Salary	100,000
<u>Total Bonus</u>	<u>134,600</u>
 <u>Total Compensation</u>	 <u>234,600</u>
 Total Bonus	 134,600
Total Equity Award	31,953
<u>Net Bonus Award</u>	<u>102,647</u>

For a sample of the Total Compensation Statement (with identifying information redacted) used for overseas employees, *see* Exhibit 17 (S&S CLMT-RSU 000046).

17. For the years 2003 through 2008, a production-based employee had a portion of his/her monthly Total Sales Compensation (*i.e.*, the employee’s gross commissions) allocated to a future grant of RSUs. Typically, each production-based employee could access his/her compensation statement on an internal Lehman website called “LehmanLive.” The compensation statement identified, among other things, the employee’s total “Gross Production” per month, his/her “Total Sales Compensation,” the portion of that compensation to be paid in cash referred to as “Cash Commissions,” and the portion to be paid in RSUs granted near the end of the year, referred to as “Equity Accrual Calculated.” As illustrated by the attached Exhibits 18 and 19, the term Total Sales Compensation (fifth line from the bottom) was used to describe

the total of Cash Commissions plus Equity Accrual Calculated. *See* Exhibits 18 and 19 (sample compensation statements with identifying information redacted).

18. Near the end of each fiscal year through and including 2007 (but excluding fiscal year 2008), the total amount of the Equity Accrual Calculated for each of the pay periods in that fiscal year was typically awarded to the employee in the form of RSUs, with the number of RSUs based on the total Equity Accrual Calculated divided by the price of the RSUs on the Grant Date. *See* Exhibit 3(2003 U.S. SVP Brochure) at 7.

19. In fiscal year 2008, for all monthly pay periods prior to September 2008, a portion of the compensation for production-based employees accrued as part of the Equity Accrual Calculated line item on the compensation statement. The compensation statements for production-based employees (other than Managing Directors of Neuberger Berman) for the fiscal year December 1, 2007 to November 30, 2008 do not reflect any “Equity Accrual Calculated” for September through November 2008. *See* Exhibits 18 and 19 (sample compensation statements with identifying information redacted).

Taxation of RSUs and CSAs

20. A brochure for the FY 2003 Program Lehman Brothers distributed to U.S. employees receiving RSUs advised them as follows:

Tax Treatment of Restricted Stock Units

Under current tax regulations, you will not be taxed on the value of your RSUs until they convert to common stock. As a result, your RSUs appreciate on a pre-tax basis for the five-year restriction period

Provided below is a summary of the U.S. taxes that are ultimately due under current tax law:

- At the time the RSUs are awarded, there is no taxable event.

- After the restriction period for 2003 RSUs ends, on November 30, 2008, your RSUs, including any additional RSUs that you receive through dividend reinvestment, convert to common stock. Ordinary income equal to the November 30, 2008 market value of your shares will be reported to the IRS, and you will be subject to tax withholding on this amount. Since the receipt of these shares is treated as compensation paid to you, ordinary income tax rates apply, rather than the special provisions dealing with capital gains.
- On November 30, 2008, when your 2003 RSUs convert to common stock, your cost basis for tax purposes will equal the market value of your shares on that day. Any subsequent increases in value will be taxed as capital gains when the stock is sold. If the stock price is lower when you sell your shares than it was when the RSUs converted, you will have a capital loss to declare.

See LEH-RSU 0015954.

21. A similar brochure for the FY 2003 Program Lehman Brothers distributed to overseas employees receiving CSAs advised them as follows:

Tax Treatment of Contingent Stock Awards

Under current tax regulations, you will not be taxed on the value of your CSAs until they convert to common stock. As a result, your CSAs appreciate on a pre-tax basis for the five-year restriction period.

Provided below is a summary of the taxes that are ultimately due under current tax law:

- At the time the CSAs are awarded, there is no taxable event.
- After the restriction period for 2003 CSAs ends, on November 30, 2008, your CSAs, including any additional CSAs that you receive through dividend reinvestment, convert to common stock. The market value of the stock to which you are entitled on that date will be treated as employment income, on which tax will be payable at the prevailing income tax rates. For United States taxpayers, this income will be reported to the IRS and subject to applicable tax withholding.
- On November 30, 2008, when your 2003 CSAs convert to common stock, your cost basis for tax purposes will equal the market value of your shares on that day. Any subsequent increases in value will be taxed as capital gains when the stock is sold. If the stock price is lower when you sell your shares than it was when the CSAs converted, you will have a capital loss to declare.

See LEH-RSU 0007289.

22. The 2003 U.S. SVP Brochure distributed to Senior Vice-Presidents (discussed at ¶¶ 4-9 above) receiving RSUs or CSAs, and the FY 2005 Program brochures distributed to employees receiving RSUs or CSAs advised them as follows:

Tax Treatment of RSUs and Stock Options

Under current tax regulations, you will not be taxed on the value of your [RSUs / CSAs] until they convert to common stock. As a result, your [RSUs / CSAs] appreciate on a pre-tax basis for the five-year restriction period

Provided below is a summary of the taxes related to RSUs

- No taxation on the award date.
- Upon conversion to common stock, the fair market value of the shares will be taxed as employment income based on the closing price of Lehman Brothers common stock on the conversion date.
- This income will be subject to [applicable tax withholding, or tax / social security withholding in the case of CSAs in FY 2005].
- Special provisions dealing with capital gains will not apply upon conversion to common stock.
- If you retain your shares after [RSUs / CSAs] convert to common stock, the basis for capital gains is the closing price on the conversion date.

Exhibit 3 at LEH-RSU 15900; *see* LEH-RSU 0007248 (2003 brochure for CSAs awarded to SVPs); 0007273 (2003 brochure for CSAs awarded to Managing Directors), 0015680 (2003 brochure for RSUs awarded to Managing Directors), 0022619 (2005 brochure for RSUs for bonus -eligible and production-based employees, including SVPs and Managing Directors), 0022668 (2005 brochure for CSAs for bonus-eligible and production-based employees, including SVPs and Managing Directors).

23. The FY 2006 and FY 2007 Program brochures distributed to employees receiving RSUs or CSAs advised them as follows:

Under current [U.S. Federal tax law], you will not be taxed on the value of your [RSUs / CSAs] until shares of common stock are delivered. As a result, your [RSUs / CSAs] (including dividend reinvestment [RSUs / CSAs] . . .) appreciate on a pre-tax basis until they convert to shares of common stock. Provided below is a summary of the taxes related to RSUs

- No taxation on the award date.
- Upon delivery of common stock, the fair market value of the shares will be taxed as employment income based on the closing price of Lehman Brothers Holdings Inc. common stock on the conversion date.
- This income will be subject to applicable tax withholding.
- Special provisions dealing with capital gains will not apply upon delivery of common stock.
- If you retain your shares after delivery, the basis for capital gains is the closing price on the conversion date.

LEH-RSU 0014264 (2006 brochure for RSUs for bonus-eligible and production-based employees including SVPs and Managing Directors); *see* 0000290-91 (2007 brochure for RSUs for bonus-eligible and production-based employees), 0000195 (2006 brochure for CSAs for bonus-eligible and production-based employees), 0023032 (2007 brochure for CSAs for bonus-eligible and production-based employees).

24. Thus, once an RSU or CSA converted to common stock, LBHI was entitled to, and did in fact claim, a U.S. federal income tax deduction as compensation expense (subject to any other limitations as may have been required under federal, state and local income tax laws) for the then prevailing amount/value of the award in the year of payment to such employee. The amount of such income tax deduction would be based on the market price of LBHI common stock, as quoted on the New York Stock Exchange, as of the delivery/release date and deducted in the same taxable year.

25. In addition, once an RSU or CSA converted to common stock, LBHI commonly reduced the amount of the RSU/CSA Award by the amount of any income and employment taxes due to any federal, state, local or other taxing authority. The only exceptions were where, when by permitted by local law, the recipient decided to pay the tax directly by remitting sufficient cash to LBHI (or the local Lehman affiliate employing the grantee).

26. Since the Claimants' RSUs/CSAs were granted to the Claimants between 2003 and 2008, the RSUs/CSAs had not converted to common stock and no stock or shares had issued as of September 15, 2008, the date LBHI and its affiliated debtors began filing voluntary cases under chapter 11 of the Bankruptcy Code (the "Petition Date"). Therefore, as of the Petition Date, LBHI was not entitled to report the grants of the RSUs/CSAs to the Internal Revenue Service or any other tax authority as compensation income to any employee.

27. As of the Petition Date, no Claimant-employee was required to report the grants of the Claimants' RSUs/CSAs between 2003 and 2008 to the Internal Revenue Service or any other tax authority as compensation income to such employee for income tax purposes, because the RSUs/CSAs had not converted and no common stock had issued. An "Employee Q&A" issued by Lehman after the Petition Date stated as follows: "Q: What happens to my restricted stock units (RSUs)? A: This transaction [i.e., sale to Barclays] does not trigger an acceleration of vesting or delivery of your Lehman Brothers RSUs. They remain outstanding and subject to their original terms and conditions." LEH-RSU 00014383.

28. Since no shares of stock were ever issued to employees pursuant to the grants of the Claimants' RSUs/CSAs between 2003 and 2008 (other than RSUs issued as Neuberger Berman retention bonuses), LBHI did not take a federal income tax deduction for

these grants of the Claimants' RSUs/CSAs and they were never reported by the employees as compensation income to the Internal Revenue Service or any other tax authority.

29. Dividend equivalents arising from the Claimants' RSUs/CSAs granted between 2003 and 2008 were reflected in additional RSUs/CSAs consistent with dividends of Lehman common stock and were subject to the same Program provisions as the underlying RSUs/CSAs to which they related.

30. LBHI never reported the dividend equivalents arising from the Claimants' RSUs/CSAs granted between 2003 and 2008 as compensation income to the Internal Revenue Service or any other tax authority.

31. No amount of the RSU/CSA Award for the years 2003-2008, and no shares of stock to be issued pursuant to the terms thereof, were ever held by LBHI in any reserve, escrow or other similar account for the benefit of a particular grantee.

32. LBHI never purchased or reserved LBHI common stock the ownership of which was specifically attributable to a particular grantee of RSUs or CSAs.

33. LBHI's Earnings Release Q&A for the fourth quarter of 2003 states as follows: "RSUs and options generate a significant tax benefit once the shares are issued. The tax benefit is derived at the price on the date the shares are issued. Therefore, the proceeds will also be used to fund the repurchase of shares." *See* LEH-RSU 0023181. Similarly, LBHI's Earnings Release Q&A for the fourth quarter of 2006 states: "RSUs and options generate a significant tax benefit once the shares are issued. The tax benefit is derived at the price on the date the shares are issued. Therefore, the proceeds will also be used to fund the repurchase of shares." *See* LEH-RSU 0013577.

Accounting Treatment of RSUs and CSAs

34. RSUs and CSAs issued to Lehman employees under the Program were generally amortized for financial accounting purposes over various periods of time ranging from the grant year (for FY 2003 through FY 2005) or the year after the grant year (for FY 2006 and FY 2007) through the year of Conversion/Issuance five years after the Grant Date in accordance with the terms of the Program. *See* ¶¶ 4-6 above. The amount amortized was based on the prevailing market price of LBHI common stock at the Grant Date, as quoted on the New York Stock Exchange, as of the Grant Date.

35. The compensation expense for the RSU/CSA Award granted for the years 2003 through 2008 was recognized in the financial statements of LBHI for financial accounting purposes (but not tax purposes) over this period for the fulfillment of certain employment-related conditions. *Id.* LBHI's financial statements referred to this period as the "related service period" or for 2003, the "relevant service period." LEH-RSU 0005585 (2003 Consol. Fin. Stmts., Note 1 at 77), LEH-RSU 0006370 (2004 Consol. Fin. Stmts., Note 1 at 90), LEH-RSU 0006077 (2005 Consol. Fin. Stmts., Note 1 at 82), LEH-RSU 0006221-22 (2006 Consol. Fin. Stmts., Note 1 at 86-87), LEH-RSU 0005927 (Consol. Fin. Stmts., Note 1 at 94-95).

36. Thus, in FY 2003 the compensation expense for the RSUs and CSAs granted in that year was recognized for financial accounting purposes (but not tax purposes), over, for the most part, 2003 through 2008. LBHI measured the compensation expense to be amortized based on the market value of LBHI common stock at the Grant Date, without a discount for resale restrictions. *See* LEH-RSU 0005510-0005634, 0006433-0006487 (LBHI 2003 Annual Report) at LEH-RSU 0005585 (Note 1 at p. 77) and LEH-RSU 0005603 (Note 15

at p. 95); LEH-RSU 0005698-0005719, 0006134-0006277 (LBHI 2006 Annual Report) at LEH-RSU 0006244 (Note 15 at p. 109).

37. In FY 2004 and FY 2005, a portion of the compensation expense was allocated to the year of the grant and the balance was recognized over, for the most part, the five-year period through the Conversion/Issuance Date for financial accounting purposes (but not tax purposes). LBHI measured the compensation expense to be amortized based on the market price of LBHI's common stock at the Grant Date, less a discount of between three to eight percent per year for resale restrictions in place until the Conversion/Issuance Date. *See* LEH-RSU 0005635-0005671, 0006278-0006432 (LBHI 2004 Annual Report) at LEH-RSU 0006370 (Note 1 at p. 90) and LEH-RSU 0006396 (Note 16 at p. 116); LEH-RSU 0005672-0005697, 0005993-0006133 (LBHI 2005 Annual Report) at LEH-RSU 0006077 (Note 1 at p. 82) and LEH-RSU 0006097 (Note 14 at p. 102).

38. In FY 2006 and FY 2007, the compensation expense was recognized over, for the most part, a five-year period beginning the year after the year of the grant of RSUs or CSAs through the Conversion/Issuance Date for financial accounting purposes (but not tax purposes). LBHI measured the compensation expense based on the market price of LBHI's common stock at the Grant Date, less a discount of between three to eight percent per year for resale restrictions in place until the Conversion/Issuance Date. *See* LEH-RSU 0005698-0005719, 6134-6277 (LBHI 2006 Annual Report) at LEH-RSU 0006221-0006222 (Note 1 at pp. 86-87) and LEH-RSU 0006244 (Note 15 at p. 109); LEH-RSU 0005720-0005992 (LBHI 2007 Annual Report) at LEH-RSU 0005927-0005928 (Note 1 at pp. 94-95) and LEH-RSU 0005958 (Note 12 at p. 125).

39. Attached as Exhibit 20 (LEH-RSU 0014995) is a true and correct copy of any email from Mark Gross to James Emmert, dated April 14, 2004, attaching a presentation entitled “Equity Awards Overview.” The text of the email states that it is a “‘final’ version.” Attached as Exhibit 21 (LEH-RSU 0015001) is a true and correct copy of page 6 of the presentation attached to Mark Gross’ email, which contains a chart demonstrating the amortization process from 2000 and 2003. The chart follows the statement: “The amortization of awards over time lowers our comp and benefits ratio. If we were to fully expense all awards in the year of grant (including options), our comp ratio would be over 57% over the period.”

/s/ Ralph Miller

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1**

EXHIBIT 1

LEHMAN BROTHERS

ANTHONY J. COLLERTON
SENIOR VICE PRESIDENT
HUMAN RESOURCES



CONFIDENTIAL

June 3, 1999

REDACTED

REDACTED

Dear

We are delighted to confirm our offer of full-time employment as the REDACTED
REDACTED at Lehman Brothers (the "Firm"). Your title of Managing Director will be
officially confirmed by the Firm's Board of Directors shortly after your start date.

Your total compensation at Lehman Brothers will consist of salary and bonus, and will be
determined at the end of each year based on your performance and contributions to the Firm
and on the Firm's overall performance. For the performance years ending November 30,
1999, and November 30, 2000, we will guarantee you a minimum total compensation of
\$850,000, with your 1999 compensation prorated for the period you are employed by the
Firm. Specifically, your compensation will be paid as follows:

- Salary at the annualized rate of \$200,000, payable in biweekly installments in
accordance with our customary payroll practices.
- A 1999 annualized bonus of \$650,000, with the actual bonus received calculated based
on the actual number of days worked during performance year 1999. The bonus portion
of your compensation will be paid to you at such time as the Firm pays its annual bonus
distribution (on or about January 31, 2000).
- A 2000 bonus of \$650,000, to be paid to you at the time the Firm pays its annual bonus
distribution (on or about January 31, 2001).
- At the Firm's option, a portion of your total compensation (combined base salary, bonus
and other compensation) may be payable in the form of restricted stock units pursuant to
the Firm's employee Stock Award Program. Please understand that the grant of
restricted stock units is subject to the standard terms and provisions of the Program.

You will also be eligible to participate in the standard employee benefits program, which will
be explained to you during your orientation session.

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REDACTED

June 3, 1999
Page 2



The salary and bonus amounts set forth above will be paid at the time and in the amount stated except that they will not be payable if, before the date of scheduled payment, you have voluntarily terminated your Firm employment, have died or become disabled, or have been terminated from the Firm because of misconduct, breach of Firm policies or rules, dishonesty, violation of laws or regulations material to your employment, or failure to perform employment duties or obligations satisfactorily. These amounts may be reduced in the event any authorized leave of absence during 1999 or 2000. Your compensation for 2001 and subsequent years will be determined at the Firm's discretion, based on your performance and contributions to the Firm and on the Firm's overall performance.

Please understand that the terms and conditions of your employment by our Firm are governed by standard Firm policies. Among other things, this means that this offer of employment is conditional upon the successful completion of a background investigation, including reference, credit, criminal and other checks, as well as on your satisfactorily meeting all pre-employment requirements, including passing a pre-employment drug screen and producing documentation to verify your identity and eligibility to work in the United States.

While the foregoing compensation commitments will be honored, this letter is not a contract of continuing employment. Your employment by the Firm is for no fixed term, and either you or the Firm may terminate the employment relationship at any time and for any reason.

This agreement shall be binding upon the Firm and its successors and assigns.

If you agree with the terms outlined in this letter, please acknowledge the same by signing the enclosed copy and returning it to me. Please contact me at (212) 526-3144 with any additional questions or concerns.

Sincerely,

Anthony J. Collerton

Accepted on this 4th day of June, 1999

REDACTED

cc: M. Miskovic

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2**

EXHIBIT 2

LEHMAN BROTHERS

DONNA ASARO
VICE PRESIDENT
HUMAN RESOURCES

May 4, 2007

REDACTED

REDACTED

Dear

We are pleased to confirm the terms we have agreed to with respect to your continued employment with the Mortgage Capital Division of Lehman Brothers Inc. (the "Firm").

For performance year 2007 (ending November 30, 2007), your compensation will be as follows:

- Bi-weekly base salary of \$6,346.15, which is equivalent to \$165,000 per year.
- A minimum bonus in the amount of \$685,000, less applicable deductions, payable at the time the Firm pays its annual bonus distribution (on or about January 31, 2008).

For the performance year 2008 (December 1, 2007 through November 30, 2008), your compensation will be as follows:

- Bi-weekly base salary of \$7,692.30, which is equivalent to \$200,000 per year.
- A minimum bonus in the amount of \$650,000, less applicable deductions, payable at the time the Firm pays its annual bonus distribution (on or about January 31, 2009).

The foregoing salary will be paid for all periods of your active employment with the Firm in performance years 2007 and 2008. The bonuses set forth above will be paid at the times and in the amounts stated except that such bonuses will not be payable if you have failed to obtain and/or maintain in good standing all applicable licenses and registrations or if, before the date of scheduled payment, you have resigned, or have been terminated from the Firm because of misconduct, breach of Firm policies or rules, dishonesty, violation of laws or regulations, or substantial and continuing failure to perform employment duties or obligations satisfactorily (collectively or individually, "Cause"). The above stated bonus amounts may be reduced in the event of an approved leave of absence during the applicable performance year.

At the Firm's discretion, a portion of your total 2007, 2008 and future years' total compensation (combined base salary, bonus, and other compensation) will be payable in conditional equity awards (restricted stock units and/or other equity awards) pursuant to the Firm's employee equity

LEHMAN BROTHERS
745 7TH AVENUE, 24TH FLOOR NEW YORK, NY 10019 TELEPHONE 212-526-1000

award program as then in effect. The terms and conditions of the Equity Award Program, including terms and conditions relating to vesting, exercisability, and forfeiture, will be established by the Firm from time to time in its discretion.

All payments described in this letter will be subject to applicable payroll and income tax withholding and other applicable deductions. Your compensation with respect to all periods after performance year 2008 will be determined at the Firm's discretion.

Please understand that the terms and conditions of your employment by our Firm will continue to be governed by standard Firm policies.

Please understand that this letter is not a contract of continuing employment. Your employment by the Firm is for no fixed term, and either you or the Firm may terminate the employment relationship at any time for any reason subject to any applicable notice requirement. Currently, the Firm's notice policy requires officers of the Firm to provide 30 days' advance written notice of resignation, and provides for 30 days' advance notice by the Firm to its officers in the event of an involuntary termination under certain circumstances.

REDACTED, we are enthusiastic and pleased that you are going to continue to be a part of our organization. If you agree with the terms outlined in this letter, please acknowledge same by signing this letter and returning it to me. An additional copy of this letter is enclosed for your files.

Sincerely,



Donna Asaro
Vice President
Human Resources

Accepted and agreed to:

REDACTED

by:

5/23/07
Date

LEHMAN BROTHERS

145 1ST AVENUE, 24TH FLOOR NEW YORK, NY 10019 TELEPHONE 212-526-1000

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3**

EXHIBIT 3

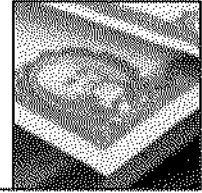
2003

EQUITY AWARD PROGRAM

Senior Vice President



LEHMAN BROTHERS



2003 EQUITY AWARD PROGRAM

Senior Vice President

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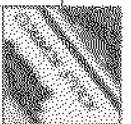
This brochure describes significant features of the Lehman Brothers Equity Award Program for 2003. It is not intended to replace the award agreement or other official plan documents. This brochure should be read in conjunction with the other award documents.

2003 EQUITY AWARD PROGRAM AT A GLANCE

- All eligible Senior Vice Presidents (SVPs) receive a portion of their total compensation in conditional equity awards. The amount of compensation payable in equity increases as the amount of your compensation rises.
- The equity component of total compensation is in a combination of restricted stock units (RSUs) and stock options. Seventy-five percent of your 2003 equity award was in RSUs; 25 percent was in stock options.
- Each RSU represents the conditional right to receive one share of Lehman Brothers common stock five years after the RSU is granted, assuming continued employment with the Firm. On November 30, 2008, the restriction period will end, and you will be entitled to receive one share of Lehman Brothers common stock for each vested RSU you hold at that time. Once your RSUs convert to common stock, they become freely tradable. The RSUs cannot be sold, traded, pledged, or assigned before conversion.
- Your 2003 RSUs were calculated based on the price of \$53.54 per RSU (reflecting a December 10, 2003 market price of \$71.39, less a 25 percent discount).
- Your 2003 stock options have an exercise price of \$71.39 and will expire on November 29, 2013. The number of options you received was based on the Black-Scholes value (\$27.79) of a 10-year Lehman Brothers option, less a 25 percent discount (\$20.84).

1
Senior Vice President

Your Award Summary details your 2003 award.



HOW THE EQUITY AWARD PROGRAM WORKS

The Equity Award Program for Senior Vice Presidents (SVPs) was developed to recognize the important role you, as an SVP, play in the success of the Firm. Together with your colleagues, you drive revenue generation, provide quality service and technical expertise to our clients and customers, manage expenses, and provide the infrastructure support to ensure efficient and effective processes. Given the key role you play in Lehman Brothers' success, it is important for you to have a significant stake in the Firm. With this in mind, the Equity Award Program for SVPs was designed to deliver a significant portion of your compensation in conditional equity awards (restricted stock units (RSUs) and stock options), which you acquire at a substantial discount. The Program provides you with an incentive to think and act like an owner every day, and allows you to share in the Firm's financial success over time.

Your 2003 equity award was awarded to you as a portion of your 2003 compensation. Seventy-five percent of your 2003 equity award was in RSUs; 25 percent was in stock options. Each RSU represents the conditional right to receive one share of Lehman Brothers common stock five years after the grant date, on November 30, 2008. You can consider the RSUs as shares of Lehman Brothers common stock that the Firm holds on your behalf for five years, which you will be entitled to receive at that time provided you meet certain terms and conditions. The RSUs cannot be sold, traded, pledged, or assigned for that five-year period.

The stock options awarded to you in 2003 will expire on November 29, 2013. These options may not be sold, traded or pledged and may only be exercised by you (or your estate in the event of your death).

The Size of Your Award

The Award Summary shows your 2003 equity award. The amount of each individual's award is determined according to a schedule that specifies the awards granted at each level of compensation. Under this schedule, the amount of compensation in the form of conditional equity awards (RSUs and stock options) increases as total compensation rises.

Salaried Members of the Firm: Your award was based on your 2003 total compensation, which includes salary earned in fiscal year 2003 plus any additional compensation with respect to the fiscal year in 2003, even if some of these payments are deferred or paid in 2004. Such compensation includes 2003 bonus, commissions, and other compensation.


Investment Representatives (IRs): Similar to salaried employees, you received a year-end conditional equity award as a portion of your 2003 total compensation. Your equity award accrued on a monthly basis, as a portion of your total payout on gross production during December 2002 through October 2003 (paid from January through November 2003) after all adjustments. For 2003, the portion of your total payout in cash (such as cash commissions) and the portion accrued in conditional equity awards were based on the award schedule previously communicated to you. (A copy of 2003 Equity Award Schedule appears on page 5.) The 2003 payout may have included regular grid production payout, certain special payments, and other production payout. During any period an IR is paid a draw, equity (in the form of RSUs and/or stock options) is awarded with respect to the amount of the draw. If the draw ends and the IR has earned production payout in excess of the draw, a portion of the excess ("overage") is paid in cash and a portion is accrued toward a year-end equity award (in the year in which overage is accrued).

Note that for purposes of this brochure, all references to payout or compensation assume compensation payments that are equity eligible only.

The Firm-Provided Discount

The number of RSUs you received for 2003 was based on the closing price of Lehman Brothers common stock (\$71.39 per share), less a 25 percent discount. With a 25 percent discount, every \$100 of compensation in RSUs gives you \$133 in value. A 25 percent discount really means that the Firm "grosses up" your contribution 33 percent at the outset.

The number of options you received for 2003 was based on the Black-Scholes value (\$27.79) of a 10-year Lehman Brothers option on December 10, 2003, less a 25 percent discount (\$20.84). These options have an exercise price of \$71.39. Your 2003 options will expire approximately 10 years after the grant date, on November 29, 2013.



The amount of compensation paid in equity increases as the amount of total compensation rises.

COMPONENTS OF 2003 EQUITY AWARD

Equity Award in RSUs and Stock Options

All SVPs receive a portion of their total compensation in the form of conditional equity awards. The equity component of total compensation is in a combination of both RSUs and stock options. Seventy-five percent of your 2003 equity award was in RSUs; 25 percent was in stock options.

Description	RSUs	Stock Options
Grant Date:	December 10, 2003	December 10, 2003
Market Price:	\$71.39	N/A
Exercise Price:	N/A	\$71.39
Black-Scholes Value:	N/A	\$27.79
Discount:	25%	25%
Cost to SVP:	\$53.54	\$20.84
Restriction Period:	5 years, until 11/30/08	N/A
Option Period:	N/A	10 years, until 11/29/13

EQUITY AWARD VESTING

When will my RSUs vest?

The vesting provisions of your 2003 RSUs are consistent with last year's SVP RSUs. For purposes of discussing the vesting schedule, you should consider your RSU award as having two components: the **principal portion** and the **discount portion**. The principal portion represents the number of RSUs awarded as part of your 2003 compensation before the discount (75 percent of the award). The discount portion represents 25 percent of your RSU award.

Your RSUs will vest in two stages:

2 Years (November 30, 2005): Principal portion

5 Years (November 30, 2008): Discount portion

Notwithstanding the above, in the event your employment is terminated with Cause or you engage in Detrimental Activity prior to November 30, 2008, all of your RSUs will be forfeited. Please refer to page 10 for the definition of Detrimental Activity.

When will my stock options become exercisable?

Your stock options will become exercisable consistent with the vesting schedule of your 2003 RSUs. Your stock options will become exercisable in two stages:

2 Years (November 30, 2005): Principal portion

5 Years (November 30, 2008): Discount portion

Notwithstanding the above, in the event your employment is terminated with Cause or you engage in Detrimental Activity prior to November 29, 2013, all of your stock options will be forfeited. Please refer to page 10 for the definition of Detrimental Activity.

Please refer to the *Termination Provisions for RSUs and Stock Options* on page 8 for a detailed explanation of how your RSUs and stock options may be affected if you leave Lehman Brothers, including the circumstances under which you may forfeit your rights to your RSUs and stock options.



SALARIED MEMBERS OF THE FIRM

2003 Equity Award Schedule

The participation schedule for 2003 is listed below. This schedule reflects the equity portion of 2003 total compensation. An example of the calculations follows.

Total Compensation Range	Portion of 2003 Compensation Paid Through Equity Award Program
\$0 - \$99,999	2% of 2003 total compensation
\$100,000 - \$199,999	\$2,000 plus 6% of 2003 total compensation over \$100,000
\$200,000 - \$299,999	\$8,000 plus 10% of 2003 total compensation over \$200,000
\$300,000 - \$499,999	\$30,000 plus 16.25% of 2003 total compensation over \$300,000
\$500,000 - \$749,999	\$62,500 plus 20% of 2003 total compensation over \$500,000
\$750,000 - \$999,999	\$112,500 plus 35% of 2003 total compensation over \$750,000
\$1,000,000 - \$1,499,999	\$200,000 plus 35% of 2003 total compensation over \$1,000,000
\$1,500,000 - \$1,999,999	\$375,000 plus 45% of 2003 total compensation over \$1,500,000
\$2,000,000 - \$2,499,999	\$600,000 plus 55% of 2003 total compensation over \$2,000,000
\$2,500,000 and up	35% of 2003 total compensation

Award Calculation Example

Using the equity award schedule above, your 2003 equity award was determined at year-end based on your 2003 total compensation.

EXAMPLE: As an example, we'll go through the calculation for an SVP whose 2003 total compensation was \$400,000.

2003 Total Compensation:	\$400,000.00
Equity Award Based on 2003 Grid:	\$46,250.00
RSU Component:	\$34,687.50 (75% of Total Equity)
Stock Option Component:	\$11,562.50 (25% of Total Equity)

Based on a stock price of \$71.39 and a Black-Scholes option value of \$27.79, the components of the 2003 equity award are as follows:

RSU Component	Market Price	Discount Price	Number of Shares
RSU Award (75%):	\$34,687.50	\$71.39	548
Option Component			
Option Award (25%):	\$11,562.50	\$27.79 (a)	555
Total 2003 Equity Award:	\$46,250.00		

(a) Black-Scholes value

Note to Investment Representatives (IRs): Your 2003 equity award was accrued as a portion of your monthly payout. Please refer to the section IRs: Calculating Your 2003 Monthly Accrual on page 6 for an illustration of how your monthly equity award accrual was determined.



INVESTMENT REPRESENTATIVES (IRs)

The participation schedule for 2003 is listed below. This schedule reflects the equity portion of 2003 total compensation. * An example of the calculations follows.

2003 Equity Award Schedule

Total Compensation Range *	Portion of 2003 Compensation Paid Through Equity Award Program
\$0 - \$99,999	2.50% of 2003 total compensation
\$100,000 - \$199,999	\$2,500 plus 7.50% of 2003 total compensation over \$100,000
\$200,000 - \$299,999	\$10,000 plus 12.50% of 2003 total compensation over \$200,000
\$300,000 - \$499,999	\$37,500 plus 20.31% of 2003 total compensation over \$300,000
\$500,000 - \$749,999	\$78,125 plus 25.00% of 2003 total compensation over \$500,000
\$750,000 - \$999,999	\$140,625 plus 43.75% of 2003 total compensation over \$750,000
\$1,000,000 - \$1,499,999	\$250,000 plus 43.75% of 2003 total compensation over \$1,000,000
\$1,500,000 - \$1,999,999	\$468,750 plus 56.25% of 2003 total compensation over \$1,500,000
\$2,000,000 - \$2,499,999	\$750,000 plus 68.75% of 2003 total compensation over \$2,000,000
\$2,500,000 and up	43.75% of 2003 total compensation

*For purposes of the 2003 Equity Award Program for IRs, 2003 total compensation includes only 11 months of total compensation earned during December 2002 through October 2003 (paid January through November 2003).

Senior Vice President



Calculating Your 2003 Monthly Accrual

As an example, we'll go through the monthly calculation for an SVP IR whose 2003 total compensation earned from December 2002 through October 2003 (paid from January through November 2003) was \$360,000.

Step	Instructions	Sample Calculation	Sample Result
Step 1	Take YTD Total Payout for first month and annualize (multiply by 12 and divide by production month number).	$\$30,000 \times 12 \div 1$	\$360,000
Step 2	Calculate equity accrual from 2003 award schedule on page 5.	\$360,000	\$49,686
Step 3	Multiply result by allocation %. Subtract previous month's YTD equity accrual from result. This is the monthly equity accrual.	$(\$49,686 \times 8.33\%) - \0	\$4,141
Step 4	Take YTD Total Payout for second month and annualize (multiply by 12 and divide by production month number).	$\$65,000 \times 12 \div 2$	\$390,000
Step 5	Calculate equity accrual from 2003 award schedule on page 5.	\$390,000	\$55,779
Step 6	Multiply result by allocation %. This is the YTD equity accrual. Subtract previous month's YTD equity accrual from result. This is the monthly equity accrual.	$(\$55,779 \times 16.67\%) - \$4,141$	\$5,156
Step 7	Repeat for next month.		

Example

#	Pay Month	Monthly Total Payout (\$)	YTD Total Payout (\$)	Annualized Total Payout (\$)	Annualized Equity Award (\$)	Allocation %	YTD Equity Accrual (\$)	Monthly Equity Accrual (\$)
1	January	30,000	30,000	360,000	49,686	8.33%	4,141	4,141
2	February	35,000	65,000	390,000	55,779	16.67%	9,297	5,156
3	March	40,000	105,000	420,000	61,872	25.00%	15,468	6,171
4	April	25,000	130,000	390,000	55,779	33.33%	18,593	3,125
5	May	28,000	158,000	379,200	53,586	41.67%	22,327	3,734
6	June	32,000	190,000	380,000	53,748	50.00%	26,874	4,547
7	July	38,000	228,000	390,857	55,953	58.33%	32,639	5,765
8	August	40,000	268,000	402,000	58,216	66.67%	38,811	6,172
9	September	32,000	300,000	400,000	57,810	75.00%	43,358	4,547
10	October	27,000	327,000	392,400	56,266	83.33%	46,889	3,531
11	November	33,000	360,000	392,727	56,333	91.67%	51,639	4,750
12	December ¹	—	360,000	360,000	49,686	100.00%	49,686	(1,953)
Total								49,686

¹ Note that for purposes of calculating your 2003 equity award, your December payout was assumed to be zero.

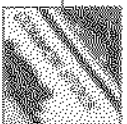


Award Calculation Example

As an example, we'll go through the calculation for an SVP IR with payout of \$360,000 for 2003. For purposes of the 2003 Equity Award Program for IRs, 2003 total compensation includes only 11 months of total compensation earned during December 2002 through October 2003 (paid January through November 2003).

Step	Instructions	Sample Calculation	Sample Result
Step 1	Your 2003 award was determined at year-end based on your total compensation from January through November.	Not applicable	\$360,000
Step 2	According to the schedule on page 5, the SVP in our example, with 2003 total compensation between \$300,000 and \$500,000 received \$37,500 plus 20.31 percent of his 2003 total compensation over \$300,000 in RSUs and stock options.	\$37,500 + (20.31% x \$60,000)	\$49,686
Step 3	The next step is to figure out how many options were awarded in 2003. The 2003 equity award was based on total payout, after all adjustments, for production months December 2002 through October 2003 (paid from January through November 2003) and the 2003 IR Equity Award Schedule on page 5. According to the schedule, the award for an IR with 2003 total payout of \$360,000 is \$37,500 plus 20.31 percent of 2003 total payout over \$300,000, or \$49,686. This amount, multiplied by 25 percent, gives us the stock option award.	[\$37,500 + (20.31% x \$60,000)] x 25%	\$12,421.50
Step 4	To calculate the number of options received, divide the value from step 3 by \$20.84 (which represents the \$27.79 Black-Scholes value of a 10-year Lehman Brothers option, less the Firm-provided 25 percent discount).	\$12,421.50 ÷ \$20.84	596 options
Step 5	The next step is to figure out how many RSUs were awarded in 2003. According to the schedule, the award for an IR with 2003 total payout of \$360,000 is \$37,500 plus 20.31 percent of 2003 total payout over \$300,000, or \$49,686. This amount, less the result in step 3 (which represents the value of the 2003 stock options), gives us the 2003 RSU award.	[(\$37,500 + (20.31% x \$60,000)) - (\$12,421.50)]	\$37,264.50
Step 6	To calculate the number of RSUs received, divided the value in step 5 by \$53.54 (which represents the \$71.39 price of Lehman Brothers stock on December 10, 2003, less the Firm-provided 25 percent discount).	\$37,264.50 ÷ \$53.54	696 RSUs

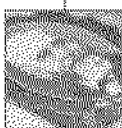
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Senior Vice President





TERMINATION PROVISIONS FOR RSUs AND STOCK OPTIONS

Reason	RSUs	Stock Options
General Rules		
Salaried Members of the Firm	<ul style="list-style-type: none"> • If termination occurs prior to January 30, 2004, all RSUs will be forfeited. • If termination occurs after January 30, 2004, the disposition of the RSUs will be subject to the provisions outlined below. 	<ul style="list-style-type: none"> • If termination occurs prior to January 30, 2004, all options will be forfeited. • If termination occurs after January 30, 2004, the disposition of the options will be subject to the provisions outlined below.
Investment Representatives	<ul style="list-style-type: none"> • If termination occurs prior to November 30, 2003, the 2003 RSUs will be based on the amount of production-based compensation accrued for your 2003 equity award through the date of your termination, in accordance with Holdings' standard formula for the payout of equity-based compensation for employees at your level, multiplied by 75 percent. The disposition of the RSUs will be subject to the provisions outlined below. 	<ul style="list-style-type: none"> • If termination occurs prior to November 30, 2003, options will be based on the amount of your production-based compensation accrued for your 2003 equity award through the date of your termination, in accordance with Holdings' standard formula for the payout of equity-based compensation for employees at your level, multiplied by 25 percent. The disposition of the options will be subject to the provisions outlined below.
Voluntary Not to a Competitor	<ul style="list-style-type: none"> • Entitled to the entire principal portion provided no Competitive Activity or Detrimental Activity through the Share Payment Date as defined below. • Entitled to a pro-rata portion of the discount (20 percent for each full year completed following the award date) provided no Competitive Activity or Detrimental Activity through the Share Payment Date. • If termination occurs after a "Full Career" with the Firm, entitled to the entire discount portion provided you do not engage in Competitive Activity or Detrimental Activity through the Share Payment Date. "Full Career" termination means you have at least 20 years of service or your age and length of service equal at least 65, plus your age is at least 45 and you have at least ten years of service with Lehman Brothers. • Any shares that remain outstanding will be issued on the Share Payment Date. The Share Payment Date is defined as the earlier of a) November 30, 2008 (five years after the award date) or b) the end of the fiscal quarter one year following the termination date. 	<ul style="list-style-type: none"> • Entitled to the entire principal portion and discount portion of the option award. • Options become exercisable six months after termination (or on the scheduled date if sooner than six months), provided no Competitive Activity or Detrimental Activity. • Options remain exercisable until the later of a) November 30, 2008 (five years after the award date) or b) six months after the termination date. • If termination occurs after a "Full Career" with the Firm, options remain exercisable until November 29, 2013 (ten years after the award date), provided you do not engage in Competitive Activity or Detrimental Activity. "Full Career" termination means you have at least 20 years of service or your age and length of service equal at least 65, plus your age is at least 45 and you have at least ten years of service with Lehman Brothers. • In no event shall the options remain exercisable after November 29, 2013 (ten years after the award date).



TERMINATION PROVISIONS FOR RSUs AND STOCK OPTIONS (cont'd)

Reason	RSUs	Stock Options
Voluntary to a Competitor	<ul style="list-style-type: none"> n Forfeit entire principal portion if termination occurs prior to November 30, 2005 (two years after the award date). n Entitled to the entire principal portion if termination occurs after November 30, 2005 (two years after the award date) provided no Detrimental Activity. n Forfeit entire discount portion. n Any shares that remain outstanding will be issued on the Share Payment Date. The Share Payment Date is defined as the earlier of a) November 30, 2008 (five years after the award date), or b) the end of the fiscal quarter one year following the termination date. 	<ul style="list-style-type: none"> n Forfeit entire principal portion and discount portion if termination occurs prior to November 30, 2005 (two years after the award date). n Forfeit options that are not exercised prior to termination date if termination occurs after November 30, 2005 (two years after the award date).
Involuntary with Cause	<ul style="list-style-type: none"> n Entire principal and discount portion will be forfeited immediately upon termination. 	<ul style="list-style-type: none"> n Entire principal and discount portion will be forfeited immediately upon termination.
Involuntary without Cause	<ul style="list-style-type: none"> n Entitled to the entire principal portion provided no Detrimental Activity through the Share Payment Date. n Entitled to a pro-rata portion of the discount (20 percent for each full year completed following the award date) provided no Detrimental Activity through the Share Payment Date. n If termination occurs after a "Full Career" with the Firm, entitled to the entire discount portion provided you do not engage in Detrimental Activity through the Share Payment Date. "Full Career" termination means you have at least 20 years of service or your age and length of service equal at least 65, plus your age is at least 45 and you have at least ten years of service with Lehman Brothers. n Any shares that remain outstanding will be issued on the Share Payment Date. The Share Payment Date is defined as the earlier of a) November 30, 2008 (five years after the award date), or b) the end of the fiscal quarter one year following the termination date. 	<ul style="list-style-type: none"> n Entitled to the entire principal portion and discount portion of the option award. n Options become immediately exercisable and remain exercisable until the later of a) November 30, 2008 (five years after the award date) or b) six months after termination date, provided no Detrimental Activity. n If termination occurs after a "Full Career" with the Firm, options remain exercisable until November 29, 2013 (ten years after the award date) provided you do not engage in Detrimental Activity. "Full Career" termination means you have at least 20 years of service or your age and length of service equal at least 65, plus your age is at least 45 and you have at least ten years of service with Lehman Brothers. n In no event shall the options remain exercisable after November 29, 2013 (ten years after the award date).

Senior Vice President



TERMINATION PROVISIONS FOR RSUs AND STOCK OPTIONS (cont'd)

Reason	RSUs	Stock Options
Death, Disability, Retirement	<ul style="list-style-type: none"> ■ Entire principal portion and discount portion will vest immediately. ■ Shares of Lehman Brothers common stock will be issued immediately. ■ Retirement means a termination of employment which meets the criteria for retirement under Lehman Brothers Holdings Inc.'s qualified defined benefit pension plan, provided you enter into an agreement with the Firm not to engage in Competitive Activity or Detrimental Activity. 	<ul style="list-style-type: none"> ■ Entire principal portion and discount portion will immediately become exercisable and remain exercisable until the expiration date (November 29, 2013). ■ Retirement means a termination of employment, which meets the criteria for retirement under Lehman Brothers Holdings Inc.'s qualified defined benefit pension plan, provided you enter into an agreement with the Firm not to engage in Competitive Activity or Detrimental Activity.

Your Conduct With Respect to Lehman Brothers After You Leave

You may forfeit your rights to any 2003 RSUs (and related dividend reinvestment) and unexercised stock options if you engage in Competitive Activity or Detrimental Activity.

COMPETITIVE ACTIVITY

Competitive Activity means involvement (whether as an employee, proprietor, consultant or otherwise) with any person or entity (including any company and its affiliates) engaged in any business activity which is materially competitive with any business carried on by Lehman Brothers Holdings Inc. or any of its subsidiaries or affiliates on the date of termination of a person's employment with the Firm, as determined in the sole discretion of the Chief Executive Officer or the Chief Operating Officer of the Firm (or their respective designees). **Please note that the determination of Competitive Activity is not based on the function that an individual performs in a company but rather the nature of the company's businesses.**

Most financial services companies, including but not limited to, all of the "bulge bracket" investment banks, many commercial banks and even small boutique-type firms are considered competitors of the Firm for purposes of the Equity Award Program. While the Firm values its client relationships with financial institutions, these relationships will not preclude companies being deemed competitors when any of their business activities may be considered competitive with the Firm. Please consult your Human Resources representative or the Compensation Department if you have questions about a particular company.

DETRIMENTAL ACTIVITY

Detrimental Activity means at any time (i) using information received during a person's employment with Lehman Brothers Holdings Inc. or any subsidiary, their affiliates or clients, in breach of such person's undertakings to keep such information confidential; (ii) directly or indirectly persuading or attempting to persuade, by any means, any employee of Holdings or any subsidiary to terminate employment with Holdings or any subsidiary or to breach any of the terms of his or her employment with Holdings or any subsidiary; (iii) directly or indirectly making any statement that is, or could be, disparaging of Holdings, its subsidiaries or affiliates, or any of their employees (except as necessary to respond truthfully to any inquiry from applicable regulatory authorities or to provide information pursuant to legal process); or (iv) directly or indirectly engaging in any activity that is substantially injurious to the financial condition, reputation, or goodwill of Holdings or its subsidiaries or affiliates, in each case as determined in the sole discretion of the Chief Executive Officer or the Chief Operating Officer of the Firm (or their respective designees).





TAX CONSIDERATIONS

Tax Treatment of RSUs and Stock Options

Under current tax regulations, you will not be taxed on the value of your RSUs until they convert to common stock. As a result, your RSUs appreciate on a pre-tax basis for the five-year restriction period.

You will not be taxed on the value of your stock option award on the date of grant. When you exercise your options, the gain will be considered ordinary income subject to applicable tax withholding.

Provided below is a summary of the taxes related to RSUs and stock options that are ultimately due under current law.

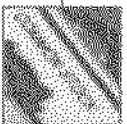
RSUs

- No taxation on the award date.
- Upon conversion to common stock, the fair market value of the shares will be taxed as employment income based on the closing price of Lehman Brothers common stock on the conversion date.
- This income will be subject to applicable withholding tax.
- Special provisions dealing with capital gains will not apply upon conversion to common stock.
- If you retain your shares after RSUs convert to common stock, the basis for capital gains is the closing price on the conversion date.

Options

- No taxation on the award date.
- When options are exercised, the difference between the Fair Market Value on the exercise date and the option exercise price will be taxed as employment income. Fair Market Value is defined as a) the average of the sale prices (for a "same-day-sale" transaction) or b) the closing price of Lehman Brothers common stock on the exercise date (for a cash exercise). Please refer to the Questions and Answers for Exercising Stock Options, that has been provided to you, for a more detailed explanation of the procedures for exercising stock options.
- This income will be subject to applicable withholding tax.
- Special provisions dealing with capital gains will not apply when options are exercised.
- If you retain your shares upon exercise, the basis for capital gains is the Fair Market Value on the date of exercise.

Consult your personal tax advisor concerning the application of all federal/state/local or foreign tax laws on your RSUs and stock options.





CHANGE IN CONTROL ("CIC") PROVISIONS

Reason	RSUs	Stock Options
Hostile	<ul style="list-style-type: none"> n All RSUs vest immediately. n Shares of Lehman Brothers common stock will be issued immediately. 	<ul style="list-style-type: none"> n All options become immediately exercisable.
Friendly	<ul style="list-style-type: none"> n Upon the CIC, you will receive the undiscounted award price for your RSUs in either cash or equity. n The additional value of the RSUs in excess of the undiscounted RSU award price will be paid on the Payment Date, defined as the earlier of: a) two years following the CIC or b) November 30, 2006 (five years after the award date). n The RSUs (or cash balance) will remain subject to the vesting and issuance restrictions (including the provisions related to Competitive Activity and Detrimental Activity) through the Payment Date. 	<ul style="list-style-type: none"> n Half of the non-exercisable options will become immediately exercisable. n The remaining half will continue to be subject to all exercise provisions until the earlier of: a) two years following the CIC or b) the scheduled exercise dates (75 percent on November 30, 2005 and 25 percent on November 30, 2006).

Payment of RSUs Upon a Friendly CIC

EXAMPLE: Let's use as an example an SVP whose 2003 compensation was \$400,000. The amount of compensation paid in RSUs was \$34,688 (for 648 RSUs at a market value of \$46,261). Assume there is a Change in Control and the market price for Lehman Brothers stock at that time is \$100 per share.

UNDISCOUNTED PURCHASE PRICE:

- n Upon a Friendly Change in Control, this SVP receives a payment of shares (or cash) equivalent in value to the original award, \$46,261. Assuming a market price of \$100, this SVP would receive 463 shares.

PREMIUM OVER UNDISCOUNTED PRICE:

- n The additional value of the RSUs, in excess of the original award value, \$18,539 ((648 RSUs x \$100) - \$46,261), will be held on the SVP's behalf in either cash or equity of the successor entity.
- n The payment (in either cash or equity of the successor entity) will be subject to the same vesting and issuance restrictions as the RSU award.
- n Assume the SVP leaves within two years of the Change in Control:
 - The SVP will be entitled to 75 percent of the additional value of the RSUs, in excess of the original award value (\$18,539 x 75% = \$13,904), provided no Competitive Activity or Detrimental

Activity for a period of one year after termination date (or the second anniversary of the Change in Control, if sooner).

- The SVP will also be entitled to a pro-rata portion of the remaining 25 percent of the additional value of the RSUs (in excess of the original award value) based on the number of full years completed after the RSU award date (e.g., if termination occurs during 2006 (but before November 30, 2006), 2/5th of the remaining amount or \$1,854).
- In total, the SVP will receive \$15,758 (\$1,854 plus \$13,904) or 158 shares. In this example, the SVP receives 85 percent of the additional value of the RSUs in excess of the original award value.
- n Please note that this value may be converted to shares of the successor entity. In this instance, the above percentages will be applied to the converted shares.



DIVIDEND EQUIVALENTS

Dividend equivalents accrue quarterly on your RSUs and are reinvested as additional RSUs, without a discount. Dividend reinvestment RSUs are subject to the same vesting and forfeiture provisions as the underlying RSUs to which they relate. The Firm retains the discretion to change this dividend policy at any time to pay in cash rather than RSUs. Dividends will not be paid on stock option awards.

VOTING RIGHTS

Lehman Brothers established a Trust and funded it with shares for your benefit to provide you with voting rights related to your RSU awards. You will be able to direct the voting related to shares held in the Trust in proportion to the number of RSUs you hold. You will continue to have these voting rights as long as you remain employed with the Firm.

OTHER INFORMATION

In the event of any conflict between the plan documents (including, but not limited to, the Restricted Stock Unit award agreement, the Stock Option award agreement, the Employee Incentive Plan, and the Employee Incentive Plan Prospectus) and the information in this summary, the plan documents will govern.

Nothing in this summary or the plan documents shall be construed to create or imply any contract of employment between you and Lehman Brothers.

All references to taxation in this summary refer to U.S. Federal taxes and current tax law. You should consult your local tax authorities or personal tax consultant for details on the impact of tax laws in effect at the time your RSUs and stock options become taxable.

If you have any questions about the Program in general, your personal award statement or your award agreement, call the Compensation Department at 212-526-8346 (5-8346), or for IRs, your PCS Human Resources contact at 212-526-2921 (5-2921).

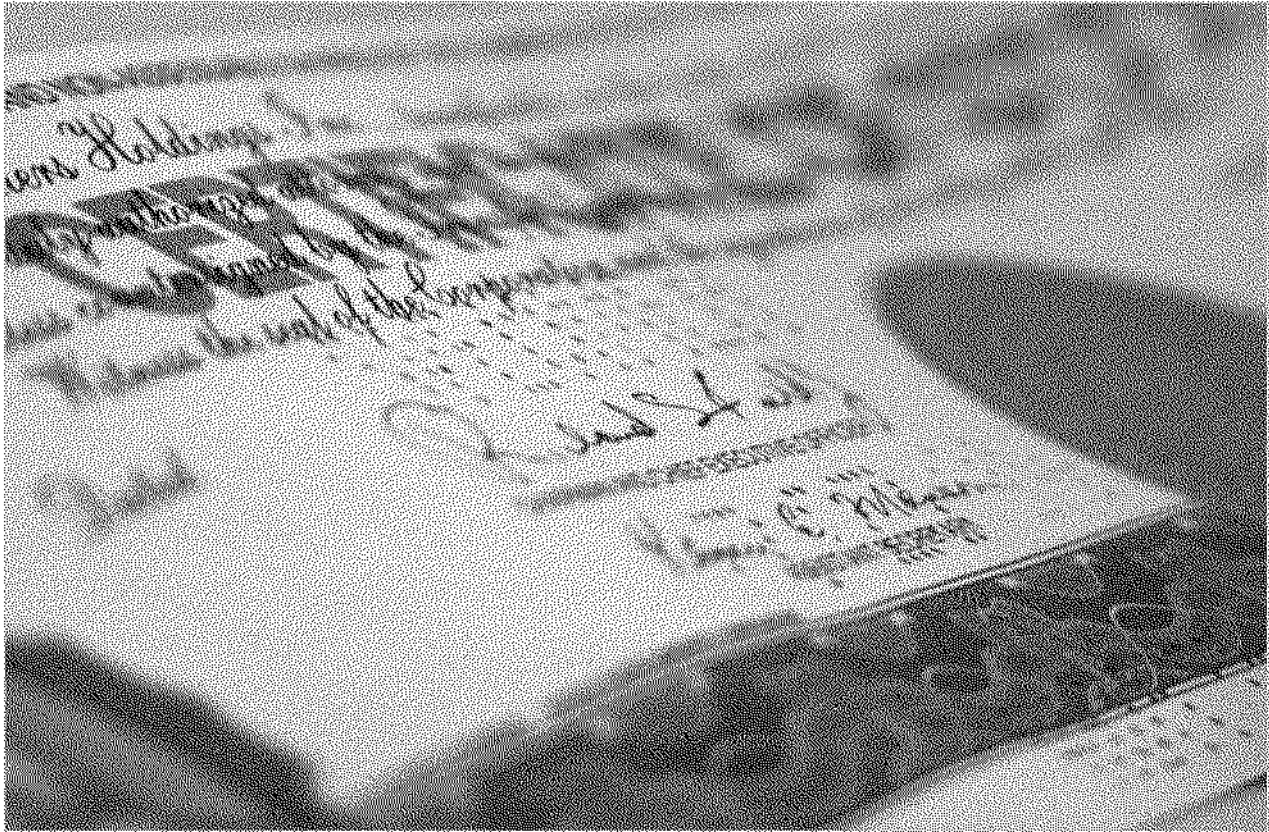


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EXHIBIT 4

2003 MANAGING DIRECTOR EQUITY AWARD PROGRAM AGREEMENT EVIDENCING A GRANT OF RESTRICTED STOCK UNITS



LEHMAN BROTHERS

1. **GRANT OF UNITS.** Pursuant to the Lehman Brothers Holdings Inc. ("Holdings") Employee Incentive Plan (the "Plan"), you are hereby granted, as of December 10, 2003 (the "Date of Grant"), the number of Restricted Stock Units ("Units") for shares of Holdings' common stock, par value \$.10 per share (the "Common Stock"), set forth on the award statement with your name on it delivered to you herewith (which number of Units may be adjusted pursuant to Paragraph 8 below).

2. **ADDITIONAL DOCUMENTS; DEFINITIONS.** You have been provided with a copy of the Plan, which is incorporated in this instrument by reference and made a part hereof, and a copy of the Plan prospectus. The Plan and the prospectus should be carefully examined. In the event of any conflict or ambiguity between this instrument and the Plan, the terms of the Plan shall govern. All capitalized terms not defined herein or on Annex A attached hereto shall have the meaning ascribed to such terms under the Plan.

3. **VESTING.** Units awarded to you hereunder shall become vested in accordance with the following vesting schedule:

- Half of the Principal Units (35% of the total award) shall become vested on November 30, 2006.
- The remaining half of the Principal Units and all of the Discount Units (65% of the total award) shall become vested on November 30, 2008.

Notwithstanding the above, in the event your employment is terminated with Cause or if you engage in Detrimental Activity prior to November 30, 2008, all of your vested and unvested Units will be forfeited and canceled.

4. **ENTITLEMENT TO RECEIVE COMMON STOCK.**

(a) **General Rule.** Unless otherwise set forth herein, you shall receive one share of Common Stock for each Unit which you hold on November 30, 2008 (the "Maturity Date"). In the event of your Termination (as defined below) for any reason or notification of termination of employment prior to January 30, 2004 or you engage in Detrimental Activity at any time prior to the Maturity Date, all Units held by you shall be forfeited and canceled. Delivery of Common Stock hereunder shall be made on, or as soon as practicable after, the Maturity Date except as specified in Paragraphs 4(b), (c), (d), (e), (f) and (g) below. For purposes of the Equity Award Program, "Termination" means the end of employment with Holdings or a subsidiary. The date of Termination and the reason for Termination are as determined in the sole discretion of an Appropriate Officer.

(b) **Voluntary Termination with Competitive Activity.** In the event of your voluntary Termination with Competitive Activity, (i) all Discount Units shall be forfeited and canceled, (ii) if such Termination occurs prior to November 30, 2006, all Principal Units shall be forfeited and canceled and (iii) if such Termination occurs on or subsequent to November 30, 2006, you shall be entitled to half of the Principal Units (35% of the total award). Such shares shall be issued to you on the Share Payment Date, provided you do not engage in Detrimental Activity through the Share Payment Date.

(c) **Voluntary Termination without Competitive Activity.** In the event of your voluntary Termination without Competitive Activity on or after January 30, 2004, you shall be entitled to receive (i) freely transferable shares of Common Stock for the Principal Units and (ii) freely transferable shares of Common Stock equal to 20% of the Discount Units multiplied by each full year of your employment with Holdings or a subsidiary after November 30, 2003 and before your Termination. However, if your Termination is a Full Career Termination (as defined in

Annex A), you will be entitled to receive all the Discount Units. Such shares shall be issued to you on the Share Payment Date, provided you do not engage in Competitive Activity or Detrimental Activity prior to the Share Payment Date. In the event of Competitive Activity prior to the Share Payment Date, the provisions specified in Paragraph 4(b) shall apply. Any Units as of the Share Payment Date not received pursuant to this Paragraph 4(c) shall be forfeited and canceled.

(d) **Involuntary Termination with Cause.** In the event of your involuntary Termination with Cause, all Principal Units and Discount Units shall be forfeited and canceled.

(e) **Involuntary Termination without Cause.** In the event of your involuntary Termination without Cause on or after January 30, 2004, you shall be entitled to receive (i) freely transferable shares of Common Stock for the Principal Units and (ii) freely transferable shares of Common Stock equal to 20% of the Discount Units multiplied by each full year of your employment with Holdings or subsidiary after November 30, 2003 and before your Termination. However, if your Termination is a Full Career Termination, you will be entitled to receive all the Discount Units. Such shares shall be issued to you on the Share Payment Date, provided you do not engage in Detrimental Activity prior to the Share Payment Date. Any Units as of the Share Payment Date not received pursuant to this Paragraph 4(e) shall be forfeited and canceled.

(f) **Retirement.** Notwithstanding the provisions of Paragraphs 4(b), (c), (d) and (e), in the event of your Retirement on or after January 30, 2004 and provided you do not engage in Competitive Activity or Detrimental Activity, all Principal Units and Discount Units shall become immediately payable. You will receive freely transferable shares of common stock for each payable Unit as soon as practicable after your Retirement. If you engage in Competitive Activity, the provisions specified in Paragraph 4(b) shall apply as of the date of your Retirement, and you shall be obligated to repay to Holdings the full gross amounts or shares received in excess of those which you would have received under Paragraph 4(b). If you engage in Detrimental Activity, you shall be obligated to repay to Holdings the full gross amounts or shares you received under this Agreement.

(g) **Occurrence of a Bankruptcy Distribution Event, Death, or Disability.** Notwithstanding the provisions of Paragraphs 4(b), (c), (d) and (e), in the event of the occurrence on or after January 30, 2004 of (i) a Bankruptcy Distribution Event, (ii) your death or Disability, (iii) your death or Disability following a Termination of employment described in Paragraphs 4(c) or (e) hereof, all outstanding Units held by you shall become immediately payable and you shall, as soon as practicable thereafter, receive freely transferable shares of Common Stock.

(h) **Affidavit.** In the event of your Termination on or after January 30, 2004, you may be requested, from time to time after your Termination, to complete and sign an affidavit with respect to Competitive Activity or Detrimental Activity, which includes representations and authorizes Holdings to verify the representations. Any failure on your part to complete, sign and return the affidavit within 60 days may cause you to forfeit all Units held by you at that time.

5. **DIVIDEND EQUIVALENTS.** With respect to each dividend or distribution paid or made on Common Stock to holders of record on or after January 30, 2004, you shall be paid cash and/or credited with a number of additional Units comparable in value to such dividend or distribution. Such additional Units shall vest and become payable at the same time as the Units to which they are attributable.

6. **LIMITATION ON OBLIGATIONS.** Holdings' and any subsidiary's obligation with respect to the Units granted hereunder is limited solely to the delivery to you of shares of Common Stock on the date when such shares are due to be delivered hereunder, and in no way shall Holdings or any subsidiary become obligated to pay cash in respect of such obligation (except for cash paid pursuant to Paragraphs 5 and 9 hereof).

7. **NON-ASSIGNMENT.** Units may not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of by you, except by will or the laws of descent and distribution. If you or anyone claiming under or through you attempts to violate this Paragraph 7, such attempted violation shall be null and void and without effect, and Holdings' obligation to issue any Common Stock hereunder shall terminate.

8. **EQUITABLE ADJUSTMENT.** In the event of a Change in Capitalization occurring on or after the Date of Grant specified above and prior to the Maturity Date, the number and kind of shares of Common Stock which may be issued with respect to Units shall be adjusted so as to reflect such change.

9. **CHANGE IN CONTROL.** Except as set forth below, upon the occurrence of a Hostile Change in Control, your Units shall vest immediately, the sales restrictions shall lapse and shares of Common Stock shall be issued. Except as set forth below, upon the occurrence of a Friendly Change in Control, you shall receive in the same form of consideration as that received by shareholders generally, the undiscounted market value (at the time of grant) for your Units, and the excess of the price paid by an acquirer over such undiscounted market value shall be deferred for the shorter of two years from the date of the Friendly Change in Control or the term of any remaining restrictions (the "Deferred Period"), but your Units shall remain otherwise subject to all issuance restrictions during the Deferred Period. Neither of the foregoing shall be effective to the extent you have tender or voting rights over shares of Common Stock held in Trust with respect to any Units, in which case you would only be issued Common Stock or receive the undiscounted market value in the same form of consideration as that received by shareholders generally (and after the Deferred Period, the excess price) in respect of such Units upon successful completion of a Change in Control.

10. **TREATMENT IN BANKRUPTCY.** (a) If you are an employee of Holdings, Holdings agrees to deliver, and (b) if you are an employee of a subsidiary, Holdings agrees to deliver to (or at the direction of) such subsidiary, shares of Common Stock on the date when such shares are due to be delivered under this Agreement in satisfaction of each Unit granted to you hereunder. If you are an employee of a subsidiary, Holdings' obligation in clause (b) of the preceding sentence is created expressly for the benefit of you, and you shall have the full right to enforce Holdings' obligation to deliver Common Stock as if such obligation were made directly in favor of you. All of your claims arising from, in connection with, or in any way relating to, any failure of Holdings to deliver to you, or to a subsidiary for delivery by such subsidiary to you, shares of Common Stock on the date when such shares are due to be delivered under this Agreement in satisfaction of each Unit granted to you shall be deemed, in the event of a bankruptcy of Holdings, to be claims for damages arising from the purchase or sale of Common Stock of Holdings, within the meaning of section 510(b) of the Bankruptcy Code and shall have in such bankruptcy the same priority as, and no greater priority than, common stock interests in Holdings.

11. **AMENDMENT.** The terms of this Agreement may be amended from time to time by the Committee in its sole discretion in any manner that it deems appropriate (including, but not limited to, the acceleration provisions).

12. **BINDING ACTIONS.** Any action taken or decision made by the Committee or its designees arising out of or in connection with the construction, administration, interpretation or effect of the Plan or this Agreement shall lie within its sole and absolute discretion, as the case may be, and shall be final, conclusive and binding on you and all persons claiming under or through you. By accepting this grant or other benefit under the Plan, you and each person claiming under or through you shall be conclusively deemed to have indicated acceptance and ratification of, and consent to, any action taken under the Plan by the Committee or its designees.

13. **NO RIGHT TO CONTINUED EMPLOYMENT.** The grant of Units shall not confer on you any right to be retained in the employ of Holdings or a subsidiary, or to receive subsequent Units or other awards under the Plan. The right of Holdings or any subsidiary to terminate your employment with it at any time or as otherwise provided by any agreement between Holdings or any subsidiary and you is specifically reserved.

14. **APPLICABLE LAW.** The validity, construction, interpretation, administration, and effect of the Plan, and of its rules and regulations, and rights relating to the Plan and to this Agreement, shall be governed by the substantive laws, but not the choice of law rules, of the State of Delaware.

15. **WITHHOLDING/DEDUCTIONS.** Holdings shall have the right to deduct applicable taxes from all amounts payable to you. It shall be a condition to the obligation of Holdings to issue shares of Common Stock hereunder (a) that you (or, in event of your death, your estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of your death) pay to Holdings or its designee, upon its demand, in accordance with the Plan, such amount as may be required for the purpose of satisfying its obligation or the obligation of any other person to withhold any taxes required by law which are incurred by reason of the issuance of such shares of Common Stock, and (b) that you (or, in the event of your death, your estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of your death) provide Holdings with any forms, documents or other information reasonably required by Holdings in connection with the grant. If the amount requested for the purpose of satisfying the withholding obligation is not paid, Holdings may refuse to issue shares of Common Stock and/or related dividend equivalents or take any other action it deems necessary to fulfill the withholding obligation. Holdings shall further have the right to deduct from all amounts remaining payable to you after satisfaction of the withholding obligations described above, the amount of any deficit, debt, tax obligation or other liability or obligation of any kind which you may at that time have with respect to Holdings or any subsidiary.

ANNEX A: DEFINITIONS

"**Appropriate Officer**" means the Chief Executive Officer or Chief Operating Officer of Holdings (or their respective designees).

"**Bankruptcy Distribution Event**" means the earlier to occur of (i) the date of, but immediately prior to, distribution to holders of claims and interests upon the substantial consummation of a confirmed plan of reorganization of Holdings in a Chapter 11 case under Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), or (ii) the date of, but immediately prior to, distribution to holders of claims and interests upon the liquidation of Holdings in a Chapter 7 case under the Bankruptcy Code.

"**Cause**" means a material breach by a person of an employment contract between the person and Holdings or any subsidiary, failure by a person to devote substantially all business time exclusively to the performance of his or her duties for Holdings or

any subsidiary, willful misconduct, dishonesty related to the business and affairs of Holdings or any subsidiary, conviction of a felony or of a misdemeanor constituting a statutory disqualification under U.S. securities laws (or failure to contest prosecution for a felony or such a misdemeanor), habitual or gross negligence in the performance of a person's duties, solicitation of employees of Holdings or any subsidiary to work at another company, improper use or disclosure of confidential information, the violation of policies and practices adopted by Holdings or any subsidiary including, but not limited to the Code of Conduct, or a material violation of the conflict of interest, proprietary information or business ethics policies of Holdings or any subsidiary, or such other circumstances as may be determined in the sole discretion of an Appropriate Officer.

"Committee" shall mean the Compensation and Benefits Committee of the Incumbent Board (see definition of Change in Control in the Plan).

"Competitive Activity" means involvement (whether as an employee, proprietor, consultant or otherwise) with any person or entity (including any company and its affiliates) engaged in any business activity which is materially competitive with any business carried on by Holdings or any of its subsidiaries or affiliates on the date of termination of a person's employment with Holdings and any of its subsidiaries, as determined in the sole discretion of an Appropriate Officer.

"Detrimental Activity" means at any time (i) using information received during a person's employment with Holdings or any subsidiary, their affiliates or their clients, in breach of such person's undertakings to keep such information confidential; (ii) directly or indirectly persuading or attempting to persuade, by any means, any employee of Holdings or any subsidiary to terminate employment with any of the foregoing or to breach any of the terms of his or her employment with the foregoing; (iii) directly or indirectly making any statement that is, or could be, disparaging of Holdings, its subsidiaries or affiliates, or any of their employees (except as necessary to respond truthfully to any inquiry from applicable regulatory authorities or to provide information pursuant to legal process); or (iv) directly or indirectly engaging in any activity that is substantially injurious to the financial condition, reputation, or goodwill of Holdings or its subsidiaries or affiliates, in each case as determined in the sole discretion of an Appropriate Officer.

"Disability" means a disability under both the Long-Term Disability Insurance Plan and Social Security Act.

"Discount Units" shall mean the number of Units (and any dividend equivalents related thereto) related to the 30% discount upon issuance of the award.

"Friendly Change in Control" shall mean any Change in Control, which is not a Hostile Change in Control.

"Full Career Termination" means a Termination when (i) a person has at least 20 years of service or (ii) a person meets all of the following criteria: (x) the person's age plus years of service with Holdings or any subsidiary equals at least 65, (y) the person is at least 45 years old, and (z) the person has at least 10 years of service with Holdings or any subsidiary.

"Hostile Change in Control" shall mean the occurrence of a Change in Control, without the prior approval of a majority of the independent members of the Incumbent Board.

"Principal Units" shall mean the number of Units (and any dividend equivalents related thereto) related to the undiscounted base portion of the award (70% of the total number of units awarded).

"Retirement" means a Termination of employment which meets the criteria for retirement under Holdings' qualified defined benefit pension plan, provided that the person has signed an agreement not to engage in Competitive Activity or Detrimental Activity, in a form prescribed in the sole discretion of an Appropriate Officer.

"Share Payment Date" means as soon as practicable after the earlier of (a) November 30, 2008 or (b) the completion of the fiscal quarter following the one-year anniversary of termination of employment.

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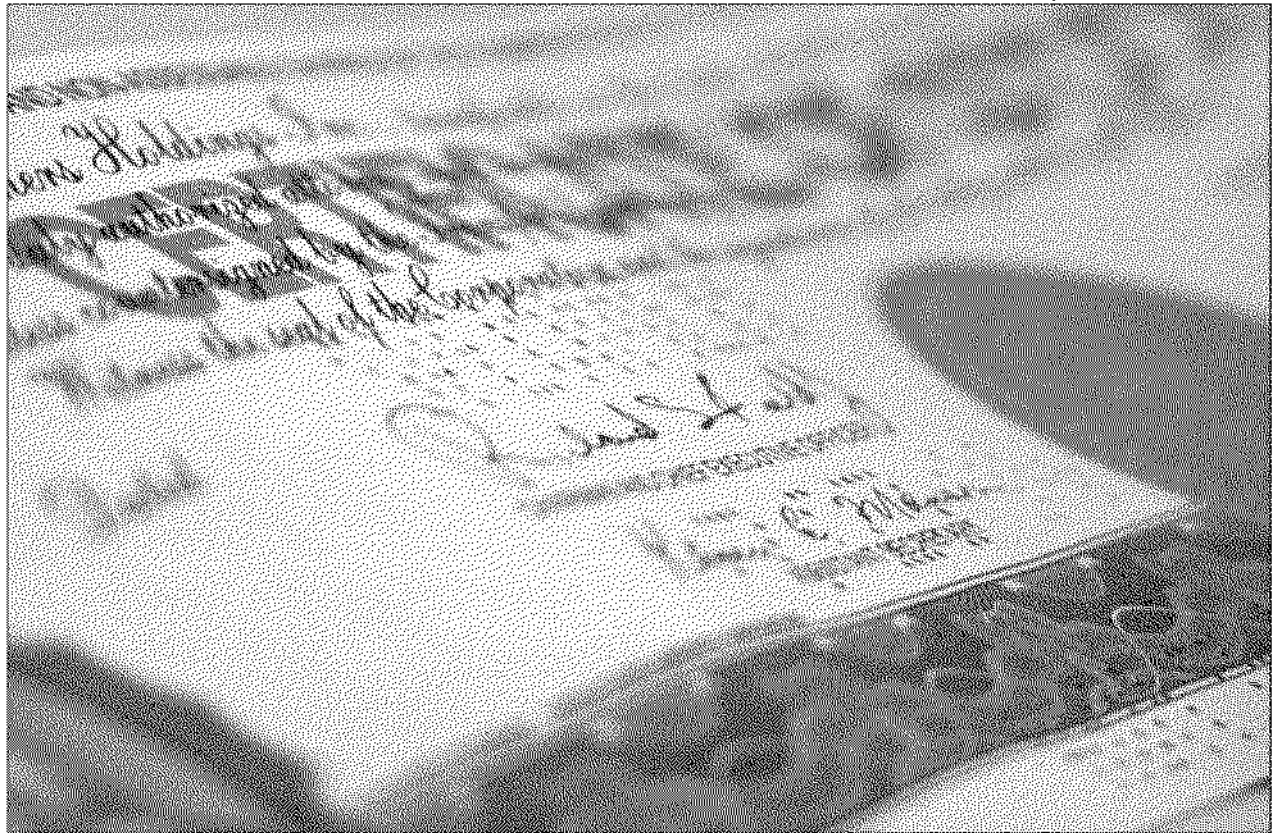
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EXHIBIT 5

2004 EQUITY AWARD PROGRAM

AGREEMENT EVIDENCING A GRANT OF RESTRICTED STOCK UNITS

Investment Representatives



LEHMAN BROTHERS

1. GRANT OF UNITS. Pursuant to the Lehman Brothers Holdings Inc. ("Holdings") Employee Incentive Plan (the "Plan"), you are hereby granted, as of December 9, 2004 (the "Date of Grant"), the number of Restricted Stock Units ("Units") for shares of Holdings' common stock, par value \$.10 per share (the "Common Stock"), set forth on the award statement with your name on it delivered to you herewith (which number of Units may be adjusted pursuant to Paragraph 8 below).

In the event of your Termination prior to November 30, 2004, the number of Units you were awarded was based on the appropriate portion of your production-based compensation accrued for your 2004 equity award through the date of your Termination, in accordance with Holdings' standard formula for the payout of equity-based compensation for employees at your level.

2. ADDITIONAL DOCUMENTS; DEFINITIONS. You have been provided with a copy of the Plan, which is incorporated in this instrument by reference and made a part hereof, and a copy of the Plan prospectus. The Plan and the prospectus should be carefully examined. In the event of any conflict or ambiguity between this instrument and the Plan, the terms of the Plan shall govern. All capitalized terms not defined herein or on Annex A attached hereto shall have the meaning ascribed to such terms under the Plan.

3. VESTING. Subject to Paragraph 4, units awarded to you hereunder shall become vested in accordance with the following vesting schedule

- The Principal Units (75% of the total award) shall become vested on November 30, 2006.
- The Discount Units (25% of the total award) shall become vested on November 30, 2009.

4. ENTITLEMENT TO RECEIVE COMMON STOCK.

- (a) General Rule. Unless otherwise set forth herein, you shall receive one share of Common Stock for each Unit which you hold on November 30, 2009 (the "Maturity Date") and you shall be entitled to receive freely transferable Shares of Common Stock as soon as practicable after the Maturity Date.
- (b) Effect of Detrimental Activity. Notwithstanding any other provision of this Agreement if you engage in Detrimental Activity at any time prior to the Share Payment Date, all Units held by you shall be forfeited and canceled.
- (c) Occurrence of Death, Disability. In the event of the occurrence of your death or Disability, all outstanding Units held by you shall become immediately payable and you shall, as soon as practicable thereafter, receive freely transferable shares of Common Stock.
- (d) Voluntary Termination with Competitive Activity. In the event of your voluntary Termination with Competitive Activity, (i) all Discount Units shall be forfeited and canceled, (ii) if such Termination occurs prior to November 30, 2006, all Principal Units shall be forfeited and canceled and (iii) if such Termination occurs on or subsequent to November 30, 2006, you shall be entitled to receive freely transferable shares of Common Stock for the Principal Units.
- (e) Voluntary Termination without Competitive Activity. In the event of your voluntary Termination without Competitive Activity, you shall be entitled to receive (i) freely transferable shares of Common Stock for the Principal Units and (ii) freely transferable shares of Common Stock equal to 20% of the Discount Units multiplied by each full year of your employment

with Holdings or a Subsidiary after November 30, 2004 and before your Termination. However, if your Termination is a Full Career Termination, you will be entitled to receive freely transferable shares of Common Stock for all Discount Units, provided you do not engage in Competitive Activity prior to the Share Payment Date. In the event of Competitive Activity prior to the Share Payment Date, the provisions specified in Paragraph 4(d) shall apply.

- (f) Involuntary Termination with Cause. In the event of your involuntary Termination with Cause, all Principal Units and Discount Units shall be forfeited and canceled.
- (g) Involuntary Termination without Cause. In the event of your involuntary Termination without Cause, you shall be entitled to receive (i) freely transferable shares of Common Stock for the Principal Units and (ii) freely transferable shares of Common Stock equal to 20% of the Discount Units multiplied by each full year of your employment with Holdings or Subsidiary after November 30, 2004 and before your Termination. However, if your Termination is a Full Career Termination, you will be entitled to receive freely transferable shares of Common Stock for all the Discount Units.
- (h) Retirement. Notwithstanding the foregoing provisions of Paragraphs 4(d), (e), (f) and (g), in the event of your Retirement and provided you do not engage in Competitive Activity or Detrimental Activity, you shall be entitled to receive freely transferable shares of Common Stock for all Principal Units and Discount Units as soon as practicable following your Retirement. If you engage in Competitive Activity, the provisions specified in Paragraph 4(d) shall apply as of the date of your Retirement, and you shall be obligated to repay to Holdings the full gross amounts or shares received in excess of those which you would have received under Paragraph 4(d). If you engage in Detrimental Activity prior to the Share Payment Date, you shall be obligated to repay to Holdings the full gross amounts or shares you received under this Agreement.
- (i) Occurrence of Death or Disability following Termination. Notwithstanding the foregoing provisions of Paragraph 4(d), (e), (f) and (g), in the event of the occurrence of your death or Disability following a Termination described in Paragraph 4(e) or (g) hereof, all outstanding Units held by you shall at that time become immediately payable and you shall, as soon as practicable thereafter, receive freely transferable shares of Common Stock.

Any shares that become payable pursuant to this Paragraph 4 (other than Paragraph 4(h) or (i)) shall be issued to you on the Share Payment Date, subject to the application of Paragraph 4(b). Any remaining Units that are not payable pursuant to the provisions of the Paragraph 4(d)-(i) shall be canceled by Holdings.

- (j) Affidavit. In the event of your Termination, you may be requested, from time to time after your Termination, to complete and sign an affidavit with respect to Competitive Activity or Detrimental Activity, which includes representations and authorizes Holdings to verify the representations. Any failure on your part to complete, sign and return the affidavit as required may cause you to forfeit all Units held by you at that time.

5. DIVIDEND EQUIVALENTS. With respect to each dividend or distribution paid or made on Common Stock to holders of record, you shall be paid cash and / or credited with a number of additional Units comparable in value to such dividend or distribution. Such additional Units shall vest and become payable at the same time as the Units to which they are attributable.

6. LIMITATION ON OBLIGATIONS. Holdings' and any Subsidiary's obligation with respect to the Units granted hereunder is limited solely to the delivery to you of shares of Common Stock on the date when such shares are due to be delivered hereunder, and in no way shall Holdings or any Subsidiary become obligated to pay cash in respect of such obligation (except for cash paid pursuant to Paragraphs 5 and 9 hereof).

7. NON-ASSIGNMENT. Units may not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of by you, except by will or the laws of descent and distribution. If you or anyone claiming under or through you attempts to violate this Paragraph 7, such attempted violation shall be null and void and without effect, and Holdings' obligation to issue any Common Stock hereunder shall terminate.

8. EQUITABLE ADJUSTMENT. In the event of a Change in Capitalization occurring on or after the Date of Grant specified above and prior to the Share Payment Date, the number and kind of shares of Common Stock which may be issued with respect to Units shall be adjusted so as to reflect such change.

9. CHANGE IN CONTROL. Except as set forth below, upon the occurrence of a Change in Control without the prior approval of a majority of the independent members of the Incumbent Board, your Units shall vest immediately, the sales restrictions shall lapse and shares of Common Stock shall be issued. Except as set forth below, upon the occurrence of a Change in Control with the prior approval of a majority of the independent members of the Incumbent Board, you shall receive in the same form of consideration as that received by shareholders generally, the lesser of (a) the undiscounted market value (at the time of grant) of the shares of Common Stock underlying your outstanding Units or (b) the price paid by an acquirer for such shares of Common Stock, and the excess, if any, of the price paid by an acquirer over such undiscounted market value shall be deferred for the shorter of (x) two years following such Change in Control or (y) the term of any remaining restrictions (the "Deferred Period"), but your Units shall remain otherwise subject to all issuance restrictions during the Deferred Period. Neither of the foregoing shall be effective to the extent you have tender or voting rights over shares of Common Stock held in Trust with respect to any Units, in which case you would only be issued Common Stock or receive the undiscounted market value in the same form of consideration as that received by shareholders generally (and after the Deferred Period, the excess price) in respect of such Units upon successful completion of a Change in Control.

10. TREATMENT IN BANKRUPTCY. (a) If you are an employee of Holdings, Holdings agrees to deliver, and (b) if you are an employee of a Subsidiary, Holdings agrees to deliver to (or at the direction of) such Subsidiary, shares of Common Stock on the date when such shares are due to be delivered under this Agreement in satisfaction of each Unit granted to you hereunder. If you are an employee of a Subsidiary, Holdings' obligation in clause (b) of the preceding sentence is created expressly for the benefit of you, and you shall have the full right to enforce Holdings' obligation to deliver Common Stock as if such obligation were made directly in favor of you. All of your claims arising from, in connection with, or in any way relating to, any failure of Holdings to deliver to you,

or to a Subsidiary for delivery by such Subsidiary to you, shares of Common Stock on the date when such shares are due to be delivered under this Agreement in satisfaction of each Unit granted to you shall be deemed, in the event of a bankruptcy of Holdings, to be claims for damages arising from the purchase or sale of Common Stock of Holdings, within the meaning of section 510(b) of the Bankruptcy Code and shall have in such bankruptcy the same priority as, and no greater priority than, common stock interests in Holdings.

11. AMENDMENT. The terms of this Agreement may be amended from time to time by the Committee in its sole discretion in any manner that it deems appropriate (including, but not limited to, the acceleration provisions).

12. BINDING ACTIONS. Any action taken or decision made by the Committee or its designees arising out of or in connection with the construction, administration, interpretation or effect of the Plan or this Agreement shall lie within its sole and absolute discretion, as the case may be, and shall be final, conclusive and binding on you and all persons claiming under or through you. By accepting this grant or other benefit under the Plan, you and each person claiming under or through you shall be conclusively deemed to have indicated acceptance and ratification of, and consent to, any action taken under the Plan by the Committee or its designees.

13. NO RIGHT TO CONTINUED EMPLOYMENT. The grant of Units shall not confer on you any right to be retained in the employ of Holdings or a Subsidiary, or to receive subsequent Units or other awards under the Plan. The right of Holdings or any Subsidiary to terminate your employment with it at any time or as otherwise provided by any agreement between Holdings or any Subsidiary and you is specifically reserved.

14. APPLICABLE LAW. The validity, construction, interpretation, administration, and effect of the Plan, and of its rules and regulations, and rights relating to the Plan and to this Agreement, shall be governed by the substantive laws, but not the choice of law rules, of the State of Delaware.

15. WITHHOLDING / DEDUCTIONS. Holdings shall have the right to deduct applicable taxes from all amounts payable to you. It shall be a condition to the obligation of Holdings to issue shares of Common Stock hereunder (a) that you (or, in event of your death, your estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of your death) pay to Holdings or its designee, upon its demand, in accordance with the Plan, either in the form of cash or freely transferable shares of Common Stock such amount as may be required for the purpose of satisfying its obligation or the obligation of any other person to withhold any taxes required by law which are incurred by reason of the issuance of such shares of Common Stock, and (b) that you (or, in the event of your death, your estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of your death) provide Holdings with any forms, documents or other information reasonably required by Holdings in connection with the grant. If the amount requested for the purpose of satisfying the withholding obligation is not paid, Holdings may refuse to issue shares of Common Stock and / or related dividend equivalents or take any other action it deems necessary to fulfill the withholding obligation. Holdings shall further have the right to deduct from all amounts remaining payable to you after satisfaction of the minimum statutory withholding obligations described above, the amount of any deficit, debt, tax obligation or other liability or obligation of any kind which you may at that time have with respect to Holdings or any Subsidiary.

16. SECTION 409(A)(1) TAX TREATMENT. Notwithstanding any other provisions of this Agreement, if any payment otherwise due hereunder would have the effect of subjecting you to tax under the provisions of Code Section 409A(a)(1), such payment shall be postponed until the earliest date upon which the payment could be made without subjecting you to tax under the provisions of Code Section 409A(a)(1).

ANNEX A: DEFINITIONS

"Appropriate Officer" means the Chief Executive Officer or Chief Operating Officer of Holdings (or their respective designees).

"Cause" means a material breach by a person of an employment contract between the person and Holdings or any Subsidiary, failure by a person to devote substantially all business time exclusively to the performance of his or her duties for Holdings or any Subsidiary, willful misconduct, dishonesty related to the business and affairs of Holdings or any Subsidiary, conviction of a felony or of a misdemeanor constituting a statutory disqualification under U.S. securities laws (or failure to contest prosecution for a felony or such a misdemeanor), habitual or gross negligence in the performance of a person's duties, solicitation of employees of Holdings or any Subsidiary to work at another company, improper use or disclosure of confidential information, the violation of policies and practices adopted by Holdings or any Subsidiary including, but not limited to the Code of Conduct, or a material violation of the conflict of interest, proprietary information or business ethics policies of Holdings or any Subsidiary, or such other circumstances as may be determined in the sole discretion of an Appropriate Officer.

"Change in Capitalization" means the occurrence of a circumstance described in Section 14 of the Plan.

"Committee" shall mean the Compensation and Benefits Committee of the Incumbent Board (see definition of Change in Control in the Plan).

"Competitive Activity" means involvement (whether as an employee, proprietor, consultant or otherwise) with any person or entity (including any company and its affiliates) engaged in any business activity which is materially competitive with any business carried on by Holdings or any of its Subsidiaries or affiliates on the date of termination of a person's employment with Holdings and any of its Subsidiaries, as determined in the sole discretion of an Appropriate Officer.

"Detrimental Activity" means (i) using information received during a person's employment with Holdings or any of its Subsidiaries relating to the business affairs of Holdings or any of its Subsidiaries, affiliates or clients, in breach of such person's undertaking to keep such information confidential; (ii) directly or indirectly persuading or attempting to persuade, by any means, any employee of Holdings or any of its Subsidiaries or affiliates to terminate employment with any of the foregoing or to breach any of the terms of his or her employment with the foregoing; (iii) directly or indirectly making any statement that is, or could be, disparaging of Holdings, its Subsidiaries or affiliates, or any of their affiliates (except as necessary to respond truthfully to any inquiry from applicable regulatory authorities or to provide information pursuant to legal process); or (iv) directly or indirectly engaging in any activity that is, or could be, substantially injurious to the financial condition, reputation, or goodwill of Holdings or its subsidiaries or affiliates, in each case as determined in the sole discretion of an Appropriate Officer.

"Disability" means a disability under both the Long-Term Disability Insurance Plan and Social Security Act.

"Discount Units" shall mean the number of Units (and any dividend equivalents related thereto) related to the 25% discount upon issuance of the award.

"Full Career Termination" means a Termination when (i) a person has at least 20 years of service or (ii) a person meets all of the following criteria: (x) the person's age plus years of service with Holdings or any Subsidiary equals at least 65, (y) the person is at least 45 years old, and (z) the person has at least 10 years of service with Holdings or any Subsidiary.

"Principal Units" shall mean the number of Units (and any dividend equivalents related thereto) related to the undiscounted base portion of the award (75% of the total number of units awarded).

"Retirement" means a Termination of employment which meets the criteria for retirement under Holdings' qualified defined benefit pension plan, provided that the person has signed an agreement not to engage in Competitive Activity or Detrimental Activity, in a form prescribed in the sole discretion of an Appropriate Officer.

"Share Payment Date" means as soon as practicable after the earlier of (a) the Maturity Date or (b) the completion of the fiscal quarter following the one-year anniversary of termination of employment.

"Termination" means the end of employment with Holdings or a Subsidiary. The date of Termination and the reason for Termination are as determined in the sole discretion of an Appropriate Officer.

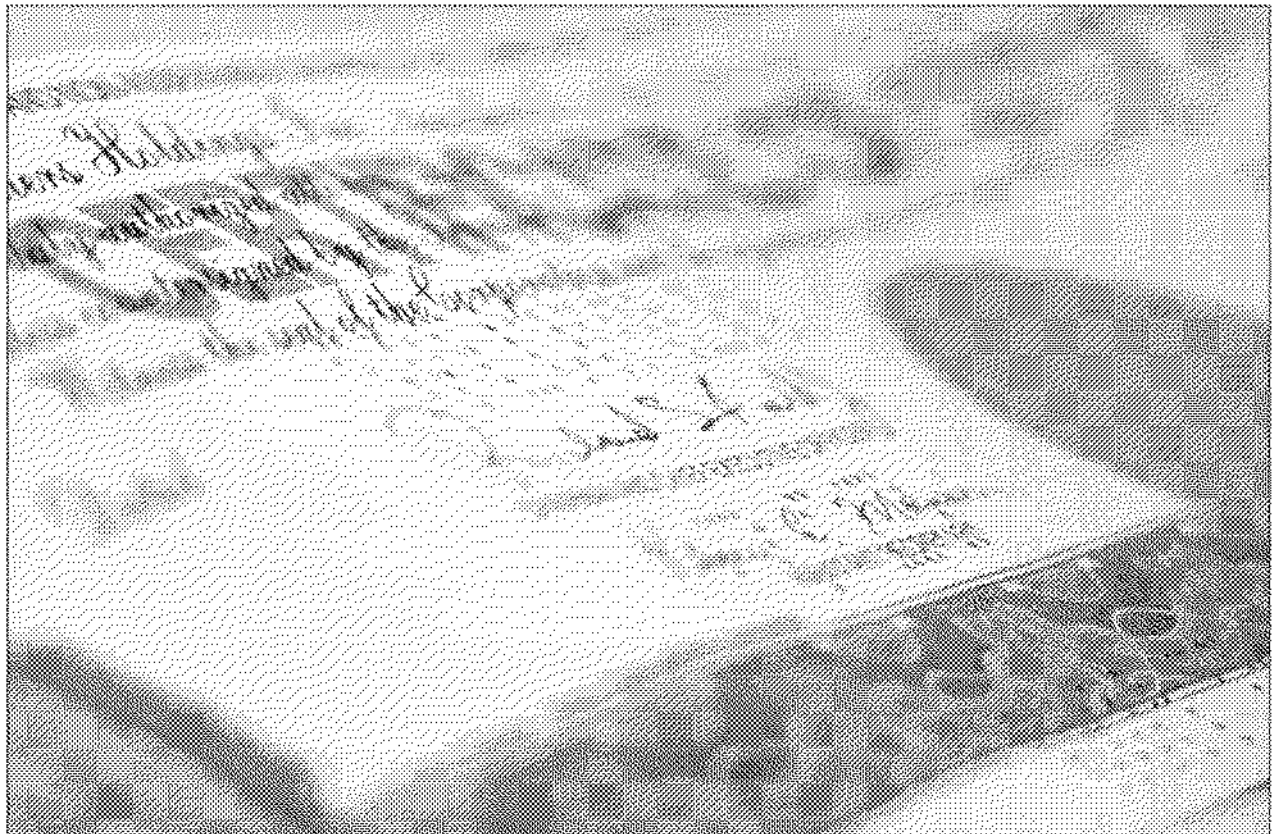
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EXHIBIT 6

2005 MANAGING DIRECTOR EQUITY AWARD PROGRAM

AGREEMENT EVIDENCING A GRANT OF RESTRICTED STOCK UNITS



LEHMAN BROTHERS

1. GRANT OF UNITS. Pursuant to the Lehman Brothers Holdings, Inc. ("Holdings") Employee Incentive Plan (the "Plan"), you are hereby granted, as of November 30, 2005 (the "Date of Grant"), the number of Restricted Stock Units ("Units") for shares of Holdings' common stock, par value \$.10 per share (the "Common Stock"), set forth on the award statement with your name on it delivered to you herewith (which number of Units may be adjusted pursuant to Paragraph 8 below).

2. ADDITIONAL DOCUMENTS; DEFINITIONS. You have been provided with a copy of the Plan, which is incorporated in this instrument by reference and made a part hereof, and a copy of the Plan prospectus. The Plan and the prospectus should be carefully examined. In the event of any conflict or ambiguity between this instrument and the Plan, the terms of the Plan shall govern. All capitalized terms not defined herein or on Annex A attached hereto shall have the meaning ascribed to such terms under the Plan.

3. VESTING. Subject to Paragraph 4, units awarded to you hereunder shall become vested in accordance with the following vesting schedule

- Half of the Principal Units (35% of the total award) shall become vested on November 30, 2008.
- The remaining half of the Principal Units and all of the Discount Units (65% of the total award) shall become vested on November 30, 2010.

4. ENTITLEMENT TO RECEIVE COMMON STOCK.

(a) General Rule. Unless otherwise set forth herein, you shall receive one share of Common Stock for each Unit which you hold on November 30, 2010 (the "Maturity Date") and you shall be entitled to receive freely transferable Shares of Common Stock as soon as practicable after the Maturity Date, but no later than December 31, 2010.

(b) Effect of Detrimental Activity. Notwithstanding any other provision of this Agreement if you engage in Detrimental Activity at any time prior to the Share Payment Date, all Units held by you shall be forfeited and canceled.

(c) Occurrence of Death, Disability. In the event of the occurrence of your death or Disability, on or after January 31, 2006, all outstanding Units held by you shall become immediately payable and you shall, on the 30th day thereafter, receive freely transferable shares of Common Stock.

(d) Effect of Termination. In the event of your Termination for any reason or notification of Termination prior to January 31, 2006, all Units held by you shall be forfeited and canceled. In the event of any Termination not described in the preceding sentence, the following rules shall apply:

(i) Voluntary Termination with Competitive Activity. In the event of your voluntary Termination with Competitive Activity, (i) all Discount Units shall be forfeited and canceled, (ii) if such Termination occurs prior to November 30, 2008, all Principal Units shall be forfeited and canceled and (iii) if such Termination occurs on or subsequent to November 30, 2008, you shall be entitled to receive freely transferable shares of Common Stock for half of the Principal Units (35% of the total award).

(ii) Voluntary Termination without Competitive Activity. In the event of your voluntary Termination without Competitive Activity, you shall be entitled to receive (i) freely transferable shares of Common Stock for the Principal Units and (ii) freely transferable shares of Common Stock equal to 20% of the Discount Units multiplied by each full year of your employment with Holdings or a Subsidiary after November 30,

and before your Termination. However, if your Termination is a Full Career Termination, you will be entitled to receive freely transferable shares of Common Stock for all Discount Units, provided you do not engage in Competitive Activity prior to the Share Payment Date. In the event of Competitive Activity prior to the Share Payment Date, the provisions specified in Paragraph 4(d)(i) shall apply.

(iii) Involuntary Termination with Cause. In the event of your involuntary Termination with Cause, all Principal Units and Discount Units shall be forfeited and canceled.

(iv) Involuntary Termination without Cause. In the event of your involuntary Termination without Cause, you shall be entitled to receive (i) freely transferable shares of Common Stock for the Principal Units and (ii) freely transferable shares of Common Stock equal to 20% of the Discount Units multiplied by each full year of your employment with Holdings or Subsidiary after November 30, 2005 and before your Termination. However, if your Termination is a Full Career Termination, you will be entitled to receive freely transferable shares of Common Stock for all the Discount Units.

(v) Retirement. Notwithstanding the foregoing provisions of Paragraphs 4(d)(i), (ii), and (iv), in the event of your Retirement and provided you do not engage in Competitive Activity or Detrimental Activity, you shall be entitled to receive freely transferable shares of Common Stock for all Principal Units and Discount Units on the 30th day following your Retirement. In the event of a voluntary Termination, if you engage in Competitive Activity prior to the Share Payment Date, the provisions specified in Paragraph 4(d)(i) shall apply as of the date of your Retirement, and you shall forfeit Units in accordance with such provision or, if you have already received shares with respect to such Units, you shall be obligated to repay to Holdings the full gross amounts or shares received in excess of those which you would have received under Paragraph 4(d)(i). In any case, if you engage in Detrimental Activity prior to the Share Payment Date, you shall forfeit all Units held by you or, if you have already received shares with respect to such Units, you shall be obligated to repay to Holdings the full gross amounts or shares you received under this Agreement.

(vi) Occurrence of Death or Disability following Termination. Notwithstanding the foregoing provisions of Paragraph 4(d)(i), (ii), (iii) and (iv) in the event of the occurrence of your death or Disability following a Termination described in Paragraph 4(d)(ii) or (iv) hereof, all outstanding Units held by you shall at that time become immediately payable and you shall, on the 30th day thereafter, receive freely transferable shares of Common Stock.

Any shares that become payable pursuant to this Paragraph 4(d) (other than Paragraph 4(d)(v) or (vi)) shall be issued to you on the Share Payment Date, subject to the application of Paragraph 4(b). Any remaining Units that are not payable pursuant to the provisions of Paragraph 4(d) shall be canceled by Holdings.

(e) Affidavit. In the event of your Termination on or after January 31, 2006, you may be requested, from time to time after your Termination, to complete and sign an affidavit with respect to Competitive Activity or Detrimental Activity, which includes representations and authorizes Holdings to verify the representations. Any failure on your part to complete, sign and return the affidavit as required may cause you to forfeit all Units held by you at that time or, in the event of Retirement, to repay to Holdings the full gross amounts or shares you received under this Agreement.

5. DIVIDEND EQUIVALENTS. With respect to each dividend or distribution paid or made on Common Stock to holders of record on or after January 31, 2006, you shall be credited with a number of additional Units equal in value to such dividend or distribution as of the date of such dividend or distribution, subject to Paragraph 8. Such additional Units shall vest and become payable at the same time as the Units to which they are attributable.

6. LIMITATION ON OBLIGATIONS. Holdings' and any Subsidiary's obligation with respect to the Units granted hereunder is limited solely to the delivery to you of shares of Common Stock on the date when such shares are due to be delivered hereunder, and in no way shall Holdings or any Subsidiary become obligated to pay cash in respect of such obligation. If the date on which shares with respect to Units are to be issued or delivered to you falls on a non-business or non-trading day, such shares shall be delivered on the immediately succeeding trading day. Whenever shares with respect to Units are required to be delivered on the 30th day following a specific triggering event, and such 30th day falls within the same tax year as the triggering event, the delivery may be made earlier, at the discretion of Holdings.

7. NON-ASSIGNMENT. Units may not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of by you, except by will or the laws of descent and distribution. If you or anyone claiming under or through you attempts to violate this Paragraph 7, such attempted violation shall be null and void and without effect, and Holdings' obligation to issue any Common Stock hereunder shall terminate.

8. EQUITABLE ADJUSTMENT. In the event of a Change in Capitalization occurring on or after the Date of Grant specified above and prior to the date you receive shares with respect to the Units, the number and kind of shares of Common Stock which may be issued with respect to Units shall be adjusted so as to reflect such change.

9. CHANGE IN CONTROL. Except as set forth below, upon the occurrence of a Change in Control without the prior approval of a majority of the independent members of the Incumbent Board, your Units shall vest immediately, the sales restrictions shall lapse and shares of Common Stock shall be issued. Except as set forth below, upon the occurrence of a Change in Control with the prior approval of a majority of the independent members of the Incumbent Board, you shall receive in the same form of consideration as that received by shareholders generally, the lesser of (a) the undiscounted market value (at the time of grant) of the shares of Common Stock underlying your outstanding Units or (b) the price paid by an acquirer for such shares of Common Stock, and the excess, if any, of the price paid by an acquirer over such undiscounted market value shall be deferred for the shorter of (x) two years following such Change in Control or (y) the term of any remaining restrictions (the "Deferred Period"), but your Units shall remain otherwise subject to all issuance restrictions during the Deferred Period. Neither of the foregoing shall be effective to the extent you have tender or voting rights over shares of Common Stock held in Trust with respect to any Units, in which case you would only be issued Common Stock or receive the undiscounted market value in the same form of consideration as that received by shareholders generally (and after the Deferred Period, the excess price) in respect of such Units upon successful completion of a Change in Control.

10. AMENDMENT. The terms of this Agreement may be amended from time to time by the Committee in its sole discretion in any manner that it deems appropriate (including, but not limited to, the acceleration provisions).

11. BINDING ACTIONS. Any action taken or decision made by the Committee or its designees arising out of or in connection with

this Agreement shall lie within its sole and absolute discretion, as the case may be, and shall be final, conclusive and binding on you and all persons claiming under or through you. By accepting this grant or other benefit under the Plan, you and each person claiming under or through you shall be conclusively deemed to have indicated acceptance and ratification of, and consent to, any action taken under the Plan by the Committee or its designees.

12. NO RIGHT TO CONTINUED EMPLOYMENT. The grant of Units shall not confer on you any right to be retained in the employ of Holdings or a Subsidiary, or to receive subsequent Units or other awards under the Plan. The right of Holdings or any Subsidiary to terminate your employment with it at any time or as otherwise provided by any agreement between Holdings or any Subsidiary and you is specifically reserved.

13. APPLICABLE LAW. The validity, construction, interpretation, administration, and effect of the Plan, and of its rules and regulations, and rights relating to the Plan and to this Agreement, shall be governed by the substantive laws, but not the choice of law rules, of the State of Delaware.

14. WITHHOLDING / DEDUCTIONS. Holdings shall have the right to deduct applicable taxes from all amounts payable to you. It shall be a condition to the obligation of Holdings to issue shares of Common Stock hereunder (a) that you (or, in event of your death, your estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of your death) pay to Holdings or its designee, upon its demand, in accordance with the Plan, either in the form of cash or freely transferable shares of Common Stock such amount as may be required for the purpose of satisfying its obligation or the obligation of any other person to withhold any taxes required by law which are incurred by reason of the issuance of such shares of Common Stock, and (b) that you (or, in the event of your death, your estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of your death) provide Holdings with any forms, documents or other information reasonably required by Holdings in connection with the grant. If the amount requested for the purpose of satisfying the withholding obligation is not paid, Holdings may withhold shares of Common Stock and / or related dividend equivalents to fulfill the withholding obligation. Holdings shall further have the right to deduct from all amounts remaining payable to you after satisfaction of the minimum statutory withholding obligations described above, the amount of any deficit, debt, tax obligation or other liability or obligation of any kind which you may at that time have with respect to Holdings or any Subsidiary.

15. CODE SECTION 409A. It is intended that none of the Units or payments otherwise due hereunder shall be deferred, accelerated, extended, paid out or modified in a manner that would result in the imposition upon you of an additional tax under Section 409A of the Code; provided that neither Holdings nor any of its employees or representatives shall have any liability to you with respect to any such taxes. In the event that it is reasonably determined by the Committee that, as a result of Section 409A of the Code, payments hereunder may not be made at the time contemplated by the terms of this Agreement or the Plan, as the case may be, without causing you to be subject to taxation under Section 409A of the Code, Holdings will make such payment on the first day that would not result in your incurring any tax liability under Section 409A of the Code.

ANNEX A: DEFINITIONS

"Appropriate Officer" means the Chief Executive Officer or Chief Operating Officer of Holdings (or their respective designees).

"Cause" means a material breach by a person of an employment

contract between the person and Holdings or any Subsidiary, including by a person to devote substantially all business time exclusively to the performance of his or her duties for Holdings or any Subsidiary, willful misconduct, dishonesty related to the business and affairs of Holdings or any Subsidiary, conviction of a felony or of a misdemeanor constituting a statutory disqualification under U.S. securities laws (or failure to contest prosecution for a felony or such a misdemeanor), habitual or gross negligence in the performance of a person's duties, solicitation of employees of Holdings or any Subsidiary to work at another company, improper use or disclosure of confidential information, the violation of policies and practices adopted by Holdings or any Subsidiary including, but not limited to the Code of Conduct, or a material violation of the conflict of interest, proprietary information or business ethics policies of Holdings or any Subsidiary, or such other circumstances as may be determined in the sole discretion of an Appropriate Officer.

"Change in Capitalization" means the occurrence of a circumstance described in Section 14 of the Plan.

"Committee" shall mean the Compensation and Benefits Committee of the Incumbent Board (see definition of Change in Control in the Plan).

"Competitive Activity" means involvement (whether as an employee, proprietor, consultant or otherwise) with any person or entity (including any company and its affiliates) engaged in any business activity which is materially competitive with any business carried on by Holdings or any of its Subsidiaries or affiliates on the date of termination of a person's employment with Holdings and any of its Subsidiaries, as determined in the sole discretion of an Appropriate Officer.

"Detrimental Activity" means (i) using information received during a person's employment with Holdings or any of its Subsidiaries relating to the business affairs of Holdings or any of its Subsidiaries, affiliates or clients, in breach of such person's undertaking to keep such information confidential; (ii) directly or indirectly persuading or attempting to persuade, by any means, any employee of Holdings or any of its Subsidiaries or affiliates to terminate employment with any of the foregoing or to breach any of the terms of his or her employment with the foregoing; (iii) directly or indirectly making any statement that is, or could be, disparaging of Holdings, its Subsidiaries or affiliates, or any of their affiliates (except as necessary to respond truthfully to any inquiry from applicable regulatory authorities or to provide information pursuant to legal process); or (iv) directly or indirectly engaging in any activity that is, or could be, substantially injurious to the financial condition, reputation, or goodwill of Holdings or its Subsidiaries or affiliates, in each case as determined in the sole discretion of an Appropriate Officer.

"Disability" means a disability under both the Long-Term Disability Insurance Plan and Social Security Act.

"Discount Units" shall mean the number of Units (and any dividend equivalents related thereto) related to the 30% discount upon issuance of the award.

"Full Career Termination" means a Termination when (i) a person has at least 20 years of service or (ii) a person meets all of the following criteria: (x) the person's age plus years of service with Holdings or any Subsidiary equals at least 65, (y) the person is at least 45 years old, and (z) the person has at least 10 years of service with Holdings or any Subsidiary.

"Principal Units" shall mean the number of Units (and any dividend equivalents related thereto) related to the undiscounted base portion of the award (70% of the total number of units awarded).

"Termination" means a Termination when the person's age plus years of service with Holdings or any Subsidiary equals at least 65, provided that (i) the person is at least 65 years old and has at least 5 years of service or (ii) the person is at least 55 years old and has at least 10 years of service.

"Share Payment Date" means the earlier of (a) the Maturity Date or (b) the 30th day after the completion of the fiscal quarter following the one-year anniversary of termination of employment.

"Termination" means the end of active employment with Holdings or a Subsidiary. The characterization of the circumstances of Termination is determined in the sole discretion of an Appropriate Officer.

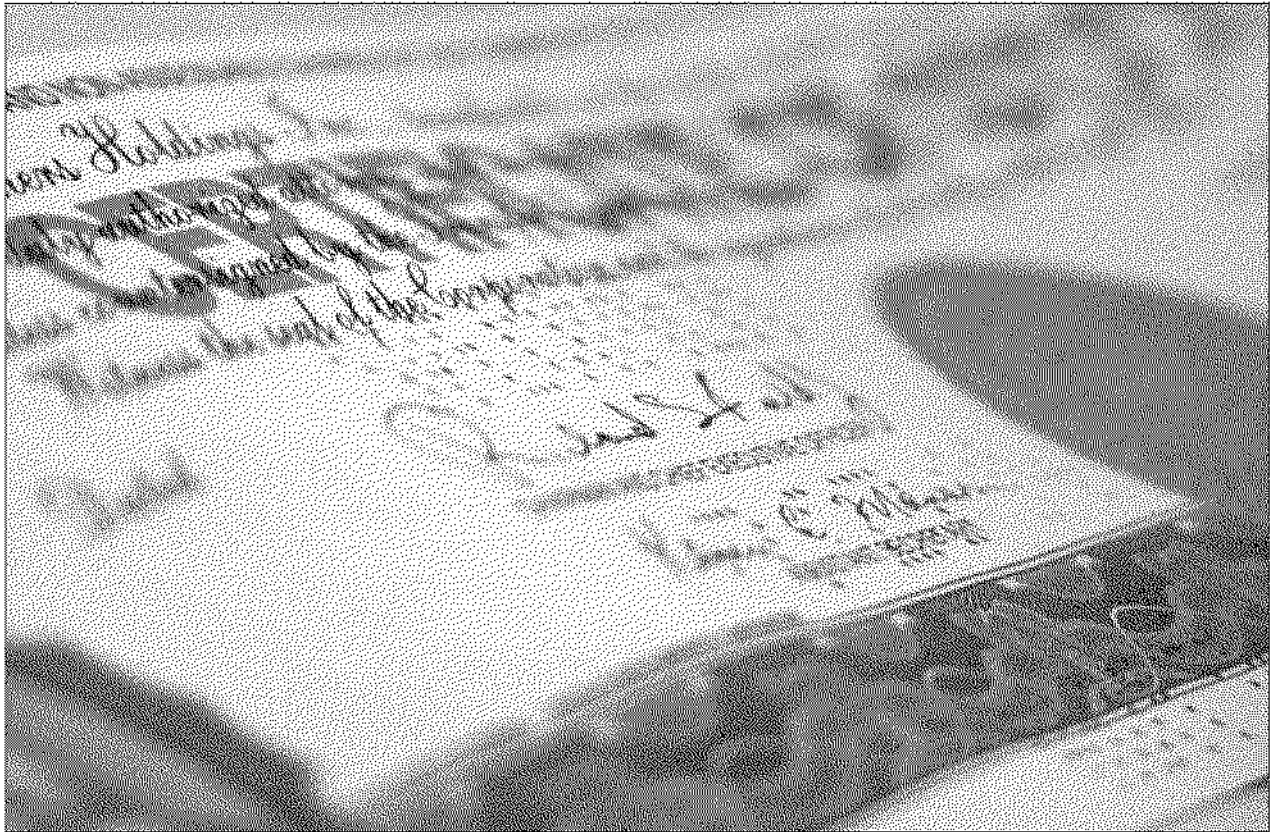
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EXHIBIT 7

2006 EQUITY AWARD PROGRAM

AGREEMENT EVIDENCING A GRANT OF RESTRICTED STOCK UNITS



LEHMAN BROTHERS

1. GRANT OF UNITS. Pursuant to the Lehman Brothers Holdings Inc. ("Holdings") 2005 Stock Incentive Plan (the "Plan"), you are hereby granted, as of December 8, 2006 (the "Date of Grant"), the number of Restricted Stock Units ("2006 Units") for shares of Holdings' common stock, par value \$.10 per share (the "Common Stock"), set forth on the award statement with your name on it delivered to you herewith (which number of 2006 Units may be adjusted pursuant to Paragraph 8 below). A portion of your 2006 Units are classified as either "Principal Units" or "Discount Units" each as defined in the glossary attached hereto. If you are classified by Holdings or its subsidiaries as a "production-based employee" for the Company's 2006 fiscal year ended November 30, 2006 ("Production-Based Employee"), in the event of your Termination prior to November 30, 2006, the number of 2006 Units you were awarded was based on the appropriate portion of your production-based compensation accrued for your 2006 equity award through the date of your Termination, in accordance with Holdings' standard formula for the payout of equity-based compensation for employees at your level.

2. ADDITIONAL DOCUMENTS; DEFINITIONS. You have been provided with a copy of the Plan, which is incorporated in this instrument by reference and made a part hereof, and a copy of the Plan prospectus. The Plan and the prospectus should be carefully examined. In the event of any conflict or ambiguity between this instrument and the Plan, the terms of the Plan shall govern. All capitalized terms not defined herein or on Annex A attached hereto shall have the meaning ascribed to such terms under the Plan.

3. VESTING. Subject to Paragraph 4, 2006 Units awarded to you hereunder shall become vested in accordance with the vesting schedule applicable to you as described under the term "Vesting Schedule" in the glossary attached hereto.

4. ENTITLEMENT TO RECEIVE COMMON STOCK.

(a) **General Rule.** Unless otherwise set forth herein, you shall receive one share of Common Stock for each 2006 Unit that has become vested which you hold on November 30, 2011 (the "Share Payment Date") and which has not otherwise been terminated pursuant to the terms and conditions hereof. In such case, you shall be entitled to receive freely transferable Shares of Common Stock as soon as practicable after the Share Payment Date, but no later than December 31, 2011.

(b) **Effect of Detrimental Activity.** Notwithstanding any other provision of this Agreement if you engage in Detrimental Activity at any time prior to the date on which delivery of shares of Common Stock in respect of your 2006 Units is called for hereunder, all 2006 Units held by you, whether or not vested, shall be terminated, forfeited, cancelled, and you shall have no further right to any shares of Common Stock relating thereto.

(c) **Occurrence of Death, Disability While You Are Employed** Without limiting Paragraphs 4(b), 4(d)(ii), 7, 9, 14 and 15, in the event of the occurrence of your death or Disability while you are employed with Holdings or any Affiliate shares of Common Stock underlying all of your then outstanding 2006 Units held by you shall become immediately deliverable, and you shall, on the 30th day thereafter, receive freely transferable shares of Common Stock, provided, however, if you are not classified as a Production-Based

Employee, the foregoing shall only apply if your death or Disability occurs on or after January 31, 2007.

(d) **Effect of Termination.** Except if you are a Production-Based Employee, and subject to Paragraph 9 hereof, in the event of your Termination for any reason or notification of Termination prior to January 31, 2007, all 2006 Units held by you shall be forfeited and cancelled. In the event of any Termination not described in the preceding sentence (including, without limitation, if you are a Production-Based Employee), the following rules shall apply:

(i) **Voluntary Termination.** Except as otherwise provided for in Paragraph 4(d)(iv) or 4(d)(v) hereof, and subject to Paragraph 9 hereof, in the event of your voluntary Termination all then outstanding unvested 2006 Units shall be terminated, forfeited and be cancelled, and you shall have no further right to any shares of Common Stock relating thereto. All other terms and conditions of this Agreement and the Plan shall continue to apply to any 2006 Units not so terminated.

(ii) **Involuntary Termination with Cause.** In the event of your involuntary Termination with Cause, all 2006 Units, whether or not vested, shall be terminated, forfeited and cancelled, and you shall have no further right to any shares of Common Stock relating thereto.

(iii) **Involuntary Termination without Cause.** Except as provided in Paragraphs 4(c), 4(d)(iv) 4(d)(v), and 9, and subject to Paragraphs 4(b), 7, 14 and 15, in the event of your involuntary Termination without Cause, you shall be entitled to receive freely transferable shares of Common Stock with respect to any then outstanding 2006 Principal Units as soon as practicable after the Share Payment Date, but no later than December 31, 2011, provided however, that your entitlement to receive freely transferable shares of Common Stock with respect to such unvested outstanding 2006 Principal Units is expressly conditioned on your timely execution of a release in such form as may be required by Holdings or any Subsidiary and in accordance with Holdings' (or any Subsidiary's) policies and procedures then in effect, but all then outstanding unvested 2006 Discount Units shall be terminated, forfeited and cancelled, and you shall have no further right to any shares of Common Stock relating thereto.

(iv) **Full Career Termination.** Notwithstanding the foregoing provisions of Paragraphs 4(d)(i) and (iii), but without limiting the application of Paragraphs 4(b), 4(d)(ii), 4(d)(v), 7, 9, 14 and 15, in the event your voluntary Termination occurs at a time when you satisfy the definition of Full Career Termination, you shall become vested in all of your then outstanding 2006 Units and shares of Common Stock relating thereto shall be delivered as soon as practicable after the Share Payment Date, but no later than December 31, 2011. An express condition of your 2006 Units becoming vested and shares of Common Stock underlying such 2006 Units becoming deliverable pursuant to the immediately preceding sentence is that you not engage in Competitive Activity through and including the end of the Company's fiscal quarter following the one year anniversary of such Termination. Notwithstanding the foregoing provisions of Paragraphs 4(d)(i) and (iii), but without limiting the application of Paragraphs 4(b), 4(d)(ii),

4(d)(v), 7, 9, 14 and 15, in the event your involuntary Termination without Cause occurs at a time when you satisfy the definition of Full Career Termination, you shall become vested in all then outstanding 2006 Units, and shares of Common Stock relating thereto shall be delivered as soon as practicable after the Share Payment Date, but no later than December 31, 2011.

(v) Occurrence of Death or Disability following

Termination. Without limiting the applicability of Paragraphs 4(c), 7, 9, 14 and 15 hereof and notwithstanding the foregoing provisions of Paragraph 4(d)(i), (iii) and (iv) in the event of the occurrence of your death or Disability following a Termination, all outstanding 2006 Units held by you that were vested at or by reason of your Termination shall at that time become immediately deliverable and you shall, on the 30th day thereafter, receive freely transferable shares of Common Stock, provided, however, if you are not classified as a Production Based Employee, the foregoing shall only apply if your death or Disability occurs on or after January 31, 2007.

Any shares of Common Stock that become deliverable pursuant to this Paragraph 4(d) (other than Paragraph 4(d)(v)) shall be delivered to you as soon as practicable after the Share Payment Date, but no later than December 31, 2011, subject to the application of Paragraphs 4(b), 9, and 15. Any remaining 2006 Units that are not deliverable pursuant to the provisions of Paragraph 4(d) or otherwise under this Agreement or the Plan shall be terminated, forfeited and be cancelled by Holdings, and you shall have no further right to any shares of Common Stock relating thereto.

For purposes of this Agreement, Holdings and/or the Committee, as applicable, shall determine in its sole discretion whether or not your Termination is voluntary, involuntary, or with or without Cause, whether or not you have engaged in Detrimental Activity, or whether or not you meet the definition of Disability or Full Career Termination.

(e) Affidavit. You may be requested, from time to time after your Termination, to complete and sign an affidavit with respect to Competitive Activity or Detrimental Activity, which includes representations and authorizes Holdings to verify the representations. Any failure on your part to complete, sign and return the affidavit as required may cause you to forfeit all 2006 Units held by you at that time or, to repay to Holdings the full gross amounts or shares you received under this Agreement as may be applicable.

5. DIVIDEND EQUIVALENTS. With respect to each dividend or distribution paid or made on Common Stock to holders of record on or after the date of grant of your 2006 Units, with respect to each then outstanding 2006 Unit you then hold, you shall be credited with a number of additional 2006 Units equal in value to such dividend or distribution as of the date of such dividend or distribution, subject to Paragraph 8. Such additional 2006 Units shall vest and become deliverable at the same time and subject to the same conditions as the 2006 Units to which they correspond; provided however, in the event you are not classified as a Production Based Employee, no such additional 2006 Units shall be granted to you in respect of any such dividend or distribution paid or made on Common Stock to holders of record on any date prior to January 31, 2007.

6. LIMITATION ON OBLIGATIONS. Holdings' and any Subsidiary's obligation with respect to the 2006 Units granted hereunder is limited solely to the delivery to you of shares of Common Stock on the date when such shares are due to be delivered hereunder, and in no way shall Holdings or any Subsidiary become obligated to pay cash in respect of such obligation. If the date on which shares of Common Stock with respect to 2006 Units are to be delivered to you falls on a non-business or non-trading day, such shares shall be delivered on the immediately succeeding trading day. Whenever shares with respect to 2006 Units are required to be delivered on the 30th day following a specific triggering event, and such 30th day falls within the same tax year as the triggering event, the delivery may be made earlier, at the discretion of Holdings.

7. NON-ASSIGNMENT. 2006 Units may not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of by you, except by will or the laws of descent and distribution. If you or anyone claiming under or through you attempts to violate this Paragraph 7, such attempted violation shall be null and void and without effect, and Holdings' obligation to deliver any shares of Common Stock hereunder shall terminate.

8. EQUITABLE ADJUSTMENT. In the event of a Change in Capitalization occurring on or after the Date of Grant specified above and prior to the date you receive shares with respect to the 2006 Units, the number and kind of shares of Common Stock which may be delivered with respect to 2006 Units shall be adjusted so as to reflect such change.

9. CHANGE IN CONTROL. Except as set forth below, upon the occurrence of a Change in Control without the prior approval of a majority of the independent members of the Incumbent Board, your 2006 Units shall vest immediately, the sales restrictions shall lapse and shares of Common Stock shall be delivered. Except as set forth below, upon the occurrence of a Change in Control with the prior approval of a majority of the independent members of the Incumbent Board, you shall receive in the same form of consideration as that received by shareholders generally, the lesser of (a) the "undiscounted market value" (at the time of grant) of the shares of Common Stock underlying your outstanding 2006 Units (i.e., the fair market value of your 2006 Units determined on the date of grant) or (b) the price paid by an acquirer for such shares of Common Stock, and the excess, if any, of the price paid by an acquirer over such "undiscounted market value" shall be deferred for the shorter of (x) two years following such Change in Control or (y) the term of any remaining restrictions (the "Deferred Period"), but your 2006 Units shall remain otherwise subject to all delivery restrictions during the Deferred Period. Neither of the foregoing shall be effective to the extent you have tender or voting rights over shares of Common Stock held in Trust with respect to any 2006 Units, in which case you would only be delivered shares of Common Stock or receive the "undiscounted market value" in the same form of consideration as that received by shareholders generally (and after the Deferred Period, the excess price) in respect of such 2006 Units upon successful completion of a Change in Control.

10. AMENDMENT. The terms of this Agreement may be amended from time to time by the Committee in its sole discretion in any manner that it deems appropriate (including, but not limited to, the acceleration provisions), including, without limitation, in order to satisfy applicable requirements of Sections 162(m) and Section 409A of the Code, as

amended from time to time, (whether or not your rights are adversely affected).

11. BINDING ACTIONS. Any action taken or decision made by the Committee or its designees arising out of or in connection with the construction, administration, interpretation or effect of the Plan or this Agreement shall lie within its sole and absolute discretion, as the case may be, and shall be final, conclusive and binding on you and all persons claiming under or through you. By accepting this grant or other benefit under the Plan, you and each person claiming under or through you shall be conclusively deemed to have indicated acceptance and ratification of, and consent to, any action taken under the Plan by the Committee or its designees.

12. NO RIGHT TO CONTINUED EMPLOYMENT. The grant of 2006 Units shall not confer on you any right to be retained in the employ of Holdings or a Subsidiary, or to receive subsequent units or other awards under the Plan. The right of Holdings or any Subsidiary to terminate your employment with it at any time or as otherwise provided by any agreement between Holdings or any Subsidiary and you is specifically reserved.

13. APPLICABLE LAW. The validity, construction, interpretation, administration, and effect of the Plan, and of its rules and regulations, and rights relating to the Plan and to this Agreement, shall be governed by the substantive laws, but not the choice of law rules, of the State of Delaware.

14. WITHHOLDING / DEDUCTIONS. Holdings shall have the right to deduct applicable taxes from all amounts payable to you. It shall be a condition to the obligation of Holdings to deliver shares of Common Stock hereunder (a) that you (or, in event of your death, your estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of your death) pay to Holdings or its designee, upon its demand, in accordance with the Plan, either in the form of cash or freely transferable shares of Common Stock such amount as may be required for the purpose of satisfying its obligation or the obligation of any other person to withhold any taxes required by law which are incurred by reason of the delivery of such shares of Common Stock, and (b) that you (or, in the event of your death, your estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of your death) provide Holdings with any forms, documents or other information reasonably required by Holdings in connection with the grant. If the amount requested for the purpose of satisfying the withholding obligation is not paid, Holdings may withhold shares of Common Stock and / or related dividend equivalents to fulfill the withholding obligation. Holdings shall further have the right to deduct from all amounts remaining payable to you after satisfaction of the minimum statutory withholding obligations described above, the amount of any deficit, debt, tax obligation or other liability or obligation of any kind which you may at that time have with respect to Holdings or any Subsidiary.

15. CODE SECTION 409A. It is intended that none of the 2006 Units or payments otherwise due hereunder shall be deferred, accelerated, extended, paid out or modified in a manner that would result in the imposition upon you of an additional tax under Section 409A of the Code; provided that neither Holdings nor any of its employees or representatives shall have any liability to you with respect to any such taxes. In the event that it is reasonably determined by the Committee that, as a result of Section 409A of the

Code, payments hereunder may not be made at the time contemplated by the terms of this Agreement or the Plan, as the case may be, without causing you to be subject to taxation under Section 409A of the Code, Holdings will make such payment on the first day that would not result in your incurring any tax liability under Section 409A of the Code.

ANNEX A: DEFINITIONS

"Appropriate Officer" means the Chief Executive Officer or Chief Operating Officer of Holdings (or their respective designees).

"Cause" means a material breach by a person of an employment contract between the person and Holdings or any Subsidiary, failure by a person to devote substantially all business time exclusively to the performance of his or her duties for Holdings or any Subsidiary, willful misconduct, dishonesty related to the business and affairs of Holdings or any Subsidiary, conviction of a felony or of a misdemeanor constituting a statutory disqualification under U.S. securities laws (or failure to contest prosecution for a felony or such a misdemeanor), habitual or gross negligence in the performance of a person's duties, solicitation of employees of Holdings or any Subsidiary to work at another company, improper use or disclosure of confidential information, the violation of policies and practices adopted by Holdings or any Subsidiary including, but not limited to the Code of Conduct, or a material violation of the conflict of interest, proprietary information or business ethics policies of Holdings or any Subsidiary, or such other circumstances as may be determined in the sole discretion of an Appropriate Officer. For avoidance of doubt, for purposes of the preceding sentence, a material breach of an employment contract or violation of policies would include, as applicable, the employee's violation of any policy or employment agreement relating to the obligation to provide advance notice of resignation from Holdings or any subsidiary.

"Change in Capitalization" means the occurrence of a circumstance described in Section 14 of the Plan.

"Committee" shall mean the Compensation and Benefits Committee of the Incumbent Board (see definition of Change in Control in the Plan).

"Competitive Activity" means involvement (whether as an employee, proprietor, consultant or otherwise) with any person or entity (including any company and its affiliates) engaged in any business activity which is materially competitive with any business carried on by Holdings or any of its Subsidiaries or affiliates on the date of termination of a person's employment with Holdings and any of its Subsidiaries, as determined in the sole discretion of an Appropriate Officer.

"Detrimental Activity" means (i) using information received during a person's employment with Holdings or any of its Subsidiaries relating to the business affairs of Holdings or any of its Subsidiaries, affiliates or clients, in breach of such person's undertaking to keep such information confidential; (ii) directly or indirectly persuading or attempting to persuade, by any means, any employee of Holdings or any of its Subsidiaries or affiliates to terminate employment with any of the foregoing or to breach any of the terms of his or her employment with the foregoing; (iii) directly or indirectly making any statement that is, or could be, disparaging of Holdings, its Subsidiaries or affiliates, or any of their affiliates (except as necessary to respond truthfully to any inquiry from applicable regulatory authorities or to provide information pursuant to legal process); or (iv) directly or indirectly engaging in any

activity that is, or could be, substantially injurious to the financial condition, reputation, or goodwill of Holdings or its Subsidiaries or affiliates, in each case as determined in the sole discretion of an Appropriate Officer.

"Disability" means a disability under both the Long-Term Disability Insurance Plan and Social Security Act.

"Discount Units" shall mean the number of 2006 Units (and any dividend equivalents related thereto that are not Principal Units. If you were a Managing Director of Holdings or any Subsidiary for the fiscal year ended November 30, 2006, thirty percent (30%) of your 2006 Units as of the date of grant will be Discount Units. If you are an employee other than a Managing Director of Holdings or any Subsidiary for the fiscal year ended November 30, 2006, twenty-five percent (25%) of your 2006 Units as of the date of grant will be Discount Units.

"Full Career Termination" means a Termination when (i) a person has at least 20 years of service; (ii) the person is at least 45 years old, and the person has at least 10 years of service; or (iii) a person meets all of the following criteria: (a) the person is at least 50 years old, and (b) the person has at least 5 years of service.

"Principal Units" shall mean the number of 2006 Units (and any dividend equivalents related thereto) related to the undiscounted base portion of the award. If you were a Managing Director of Holdings or any Subsidiary for the fiscal year ended November 30, 2006, seventy percent (70%) of your 2006 Units as of the date of grant will be Principal Units. If you are an employee other than a Managing Director of Holdings or any Subsidiary for the fiscal year ended November 30, 2006, seventy-five percent (75%) of your 2006 Units as of the date of grant will be Principal Units.

"Share Payment Date" means November 30, 2011.

"Termination" means the end of active employment with Holdings or a Subsidiary. The characterization of the circumstances of Termination is determined in the sole discretion of an Appropriate Officer.

"Vesting Schedule" means the schedule below that is applicable to you, pursuant to which your 2006 Units are scheduled to vest subject to the terms and conditions of Paragraph 3 and the other terms and conditions of the Agreement:

(a) If you were a Managing Director of Holdings or any Subsidiary for the fiscal year ended November 30, 2006 your 2006 Units are scheduled to vest as follows:

Principal Units: 50% on November 30, 2009;
50% on November 30, 2011

Discount Units: 100% on November 30, 2011.

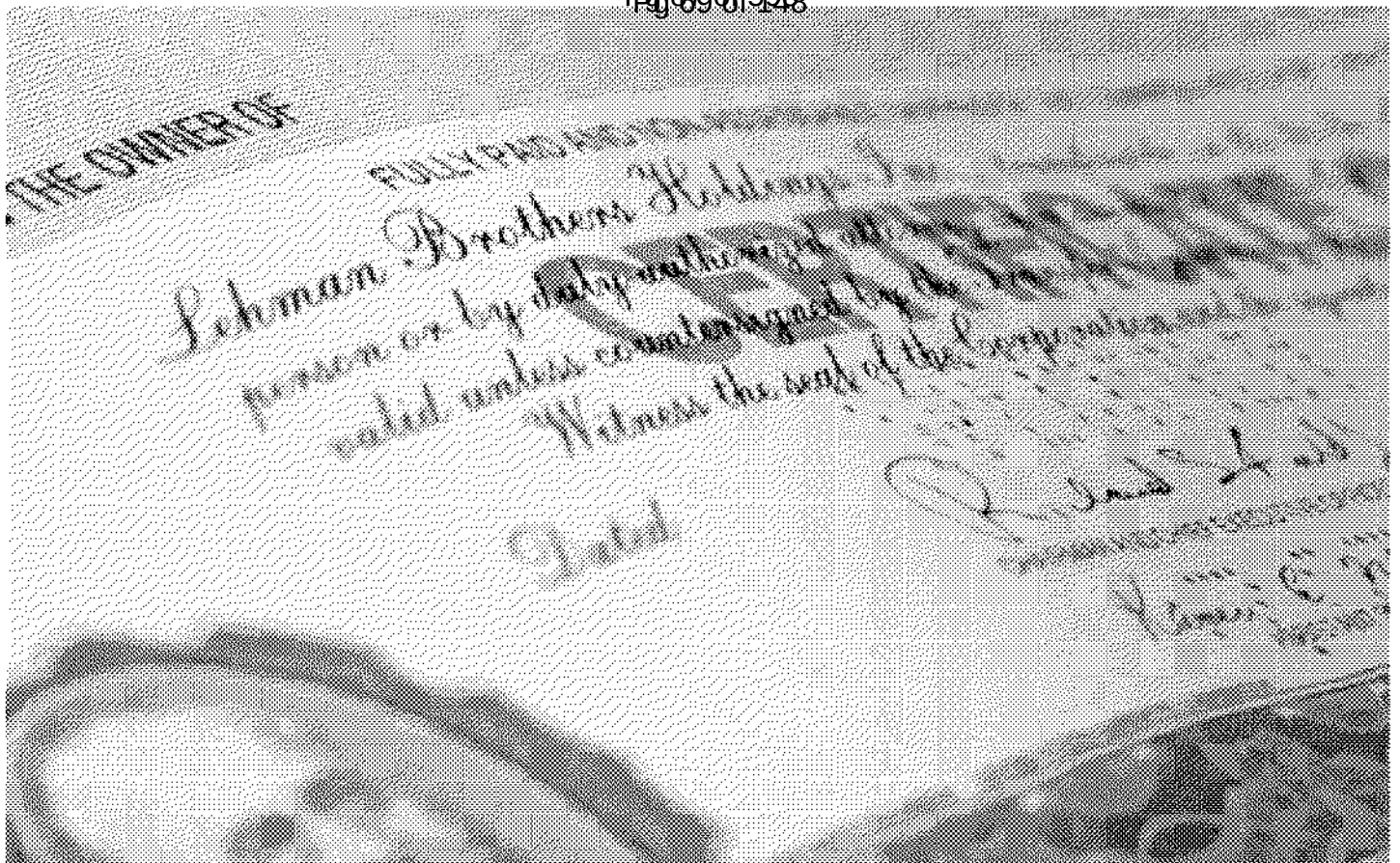
(b) If you were an employee of Holdings or any Subsidiary other than a Managing Director for the fiscal year ended November 30, 2006 your 2006 Units are scheduled to vest as follows:

Principal Units: 100% on November 30, 2008
Discount Units: 100% on November 30, 2011.

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EXHIBIT 8



2007 EQUITY AWARD PROGRAM

LIFE @ LEHMAN
YOUR BENEFITS AND LIFE BALANCE

Agreement Evidencing A Grant of
Restricted Stock Units

LEHMAN BROTHERS

1. GRANT OF UNITS. Pursuant to the Lehman Brothers Holdings Inc. ("Holdings") 2005 Stock Incentive Plan (the "Plan"), you are hereby granted, as of December 7, 2007 (the "Date of Grant"), the number of Restricted Stock Units ("2007 Units") for shares of Holdings' common stock, par value \$.10 per share (the "Common Stock"), set forth on the award statement with your name on it delivered to you herewith (which number of 2007 Units may be adjusted pursuant to Paragraph 8 below). A portion of your 2007 Units are classified as either "Principal Units" or "Discount Units" each as defined in the glossary attached hereto. If you are classified by Holdings or its subsidiaries as a "production-based employee" for the Company's 2007 fiscal year ended November 30, 2007 ("Production-Based Employee"), in the event of your Termination prior to November 30, 2007, the number of 2007 Units you were awarded was based on the appropriate portion of your production-based compensation accrued for your 2007 equity award through the date of your Termination, in accordance with Holdings' standard formula for the payout of equity-based compensation for employees at your level.

2. ADDITIONAL DOCUMENTS; DEFINITIONS. You have been provided with a copy of the Plan, which is incorporated in this instrument by reference and made a part hereof, and a copy of the Plan prospectus. The Plan and the prospectus should be carefully examined. In the event of any conflict or ambiguity between this instrument and the Plan, the terms of the Plan shall govern. All capitalized terms not defined herein or on Annex A attached hereto shall have the meaning ascribed to such terms under the Plan.

3. VESTING. Subject to Paragraph 4, 2007 Units awarded to you hereunder shall become vested in accordance with the following vesting schedule

(a) If you were a Managing Director of Holdings or any Subsidiary for the fiscal year ended November 30, 2007 your 2007 Units are scheduled to vest as follows:

Principal Units:	50% on November 30, 2010; 50% on November 30, 2012
Discount Units:	100% on November 30, 2012.

(b) If you were an employee of Holdings or any Subsidiary other than a Managing Director for the fiscal year ended November 30, 2007 your 2007 Units are scheduled to vest as follows:

Principal Units:	100% on November 30, 2009
Discount Units:	100% on November 30, 2012.

4. ENTITLEMENT TO RECEIVE COMMON STOCK.

(a) **General Rule.** Unless otherwise set forth herein, you shall receive one share of Common Stock for each 2007 Unit that has become vested which you hold on November 30, 2012 (the "Share Payment Date") and which has not otherwise been terminated pursuant to the terms and conditions hereof. In such case, you shall be entitled to receive freely transferable Shares of Common Stock as soon as practicable after the Share Payment Date, but no later than December 31, 2012.

(b) **Effect of Detrimental Activity.** Notwithstanding any other provision of this Agreement if you engage in Detrimental Activity at any time prior to the date on which delivery of shares of Common Stock in respect of your 2007 Units is called for hereunder, all 2007 Units held by you, whether or not vested, shall be terminated,

forfeited, and cancelled, and you shall have no further right to any shares of Common Stock relating thereto.

(c) Occurrence of Death, Disability While You Are Employed.

Without limiting Paragraphs 4(b), 4(d)(ii), 4(e), 7, 9, 14 and 15, in the event of the occurrence of your death or Disability while you are employed with Holdings or any Affiliate, shares of Common Stock underlying all of your then outstanding 2007 Units held by you shall become immediately deliverable, and you shall, on the 30th day thereafter, receive freely transferable shares of Common Stock.

(d) Effect of Termination. Notwithstanding Paragraph 3 hereof, in the event of any Termination the following rules shall apply:

(i) Voluntary Termination. Except as otherwise provided for in Paragraph 4(d)(iv) or 4(d)(v) hereof, and subject to Paragraph 9 hereof, in the event of your voluntary Termination all then outstanding unvested 2007 Units shall be terminated, forfeited and be cancelled, and you shall have no further right to any shares of Common Stock relating thereto. All other terms and conditions of this Agreement and the Plan shall continue to apply to any 2007 Units not so terminated.

(ii) Involuntary Termination with Cause. In the event of your involuntary Termination with Cause, all 2007 Units, whether or not vested, shall be terminated, forfeited and cancelled, and you shall have no further right to any shares of Common Stock relating thereto.

(iii) Involuntary Termination without Cause. Except as provided in Paragraphs 4(c), 4(d)(iv) 4(d)(v), and 9, and subject to Paragraphs 4(b), 4(e), 7, 14 and 15, in the event of your involuntary Termination without Cause, you shall be entitled to receive freely transferable shares of Common Stock with respect to any then outstanding 2007 Principal Units as soon as practicable after the Share Payment Date, but no later than December 31, 2012, provided however, that your entitlement to receive freely transferable shares of Common Stock with respect to such unvested outstanding 2007 Principal Units is expressly conditioned on your timely execution of a release in such form as may be required by Holdings or any Subsidiary and in accordance with Holdings' (or any Subsidiary's) policies and procedures then in effect. All then outstanding unvested 2007 Discount Units shall be terminated, forfeited and cancelled, and you shall have no further right to any shares of Common Stock relating thereto.

(iv) Full Career Termination. Notwithstanding the foregoing provisions of Paragraphs 4(d)(i) and (iii), but without limiting the application of Paragraphs 4(b), 4(d)(ii), 4(d)(v), 4(e) 7, 9, 14 and 15, in the event your voluntary Termination occurs at a time when you satisfy the definition of Full Career Termination, you shall become vested in all of your then outstanding 2007 Units and shares of Common Stock relating thereto shall be delivered as soon as practicable after the Share Payment Date, but no later than December 31, 2012. An express condition of your 2007 Units becoming vested and shares of Common Stock underlying such 2007 Units becoming deliverable pursuant to the immediately preceding sentence is that you not engage in Competitive Activity through and

including the end of the Company's fiscal quarter following the one year anniversary of such Termination. Notwithstanding the foregoing provisions of Paragraphs 4(d)(i) and (iii), but without limiting the application of Paragraphs 4(b), 4(d)(ii), 4(d)(v), 4(e) 7, 9, 14 and 15, in the event your involuntary Termination without Cause occurs at a time when you satisfy the definition of Full Career Termination, you shall become vested in all then outstanding 2007 Units, and shares of Common Stock relating thereto shall be delivered as soon as practicable after the Share Payment Date, but no later than December 31, 2012.

(v) Occurrence of Death or Disability following

Termination. Without limiting the applicability of Paragraphs 4(b), 4(e), 7, 9, 14 and 15 hereof and notwithstanding the foregoing provisions of Paragraph 4(d)(i), (iii), and (iv) in the event of the occurrence of your death or Disability following a Termination, all outstanding 2007 Units held by you that were vested at or by reason of your Termination shall at that time become immediately deliverable and you shall, on the 30th day thereafter, receive freely transferable shares of Common Stock.

Any shares of Common Stock that become deliverable pursuant to this Paragraph 4(d) (other than Paragraph 4(d)(v)) shall be delivered to you as soon as practicable after the Share Payment Date, but no later than December 31, 2012, subject to the application of Paragraphs 4(b), 9, and 15. Any remaining 2007 Units that are not deliverable pursuant to the provisions of Paragraph 4(d) or otherwise under this Agreement or the Plan shall be terminated, forfeited and be cancelled by Holdings, and you shall have no further right to any shares of Common Stock relating thereto.

For purposes of this Agreement, Holdings and/or the Committee, as applicable, shall determine in its sole discretion whether or not your Termination is voluntary, involuntary, or with or without Cause, whether or not you have engaged in Detrimental Activity, or whether or not you meet the definition of Disability or Full Career Termination.

(e) Affidavit. You may be requested, from time to time after your Termination, to complete and sign an affidavit with respect to Competitive Activity or Detrimental Activity, which includes representations and authorizes Holdings to verify the representations. Any failure on your part to complete, sign and return the affidavit as required may cause you to forfeit all 2007 Units held by you at that time or, to repay to Holdings the full gross amounts or shares you received under this Agreement as may be applicable.

5. DIVIDEND EQUIVALENTS. With respect to each dividend or distribution paid or made on Common Stock to holders of record on or after the date of grant of your 2007 Units, with respect to each then outstanding 2007 Unit you then hold, you shall be credited with a number of additional 2007 Units equal in value to such dividend or distribution as of the date of such dividend or distribution, subject to Paragraph 8. Such additional 2007 Units shall vest and become deliverable at the same time and subject to the same conditions as the 2007 Units to which they correspond

6. LIMITATION ON OBLIGATIONS. Holdings' and any Subsidiary's obligation with respect to the 2007 Units granted

hereunder is limited solely to the delivery to you of shares of Common Stock on the date when such shares are due to be delivered hereunder, and in no way shall Holdings or any Subsidiary become obligated to pay cash in respect of such obligation. If the date on which shares of Common Stock with respect to 2007 Units are to be delivered to you falls on a non-business or non-trading day such shares shall be delivered on the immediately succeeding trading day (i.e., when shares trade regular way on the New York Stock Exchange). Whenever shares with respect to 2007 Units are required to be delivered on the 30th day following a specific triggering event, and such 30th day falls within the same tax year as the triggering event, the delivery may be made earlier, at the discretion of Holdings.

7. NON-ASSIGNMENT. 2007 Units may not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of by you, except by will or the laws of descent and distribution. If you or anyone claiming under or through you attempts to violate this Paragraph 7, such attempted violation shall be null and void and without effect, and Holdings' obligation to deliver any shares of Common Stock hereunder shall terminate.

8. EQUITABLE ADJUSTMENT. In the event of a Change in Capitalization occurring on or after the Date of Grant specified above and prior to the date you receive shares with respect to the 2007 Units, the number and kind of shares of Common Stock which may be delivered with respect to 2007 Units shall be adjusted so as to reflect such change.

9. CHANGE IN CONTROL.

(a) Vesting of Units Following a Change in Control. Following a Change in Control, except to the extent that (i) you are entitled to earlier vesting pursuant to Paragraphs 3 and 4 or (ii) your 2007 Units are forfeited pursuant to Paragraph 4 due to your engaging in Detrimental Activity, Termination with Cause or voluntary Termination, all of your then outstanding 2007 Units shall vest upon the later of (x) 18 months following such Change in Control or (y) a date determined by the Committee that is within 15 days of November 30 of the Fiscal Year following the Fiscal Year in which the Change in Control occurs (such later date, the "Change in Control Vesting Date"). Additionally, all of your 2007 Units (including Principal and Discount Units) shall become immediately vested in the event of your involuntary Termination without Cause following the Change in Control but prior to the Change in Control Vesting Date.

(b) Delivery of Common Stock Following a Change in Control. Following a Change in Control, except to the extent that (i) you are entitled to receive earlier delivery of shares of Common Stock pursuant to Paragraph 4 or (ii) your 2007 Units are forfeited pursuant to Paragraph 4 due to your engaging in Detrimental Activity, Termination with Cause or voluntary Termination or by reason of Paragraphs 7 or 14, you shall receive shares of Common Stock in respect of your then outstanding 2007 Units on the Change in Control Vesting Date; provided, however, that in the event of your Termination for any reason other than due to death or Disability following the Change in Control but prior to the Change in Control Vesting Date, you shall receive shares of Common Stock in respect of your then vested 2007 Units upon the earlier of (x) the last day

of the fiscal quarter that ends after the first anniversary of the date of your Termination or (y) the Change in Control Vesting Date.

For purposes of this Paragraph 9, the term "Fiscal Year" shall refer to the fiscal year of Holdings.

10. AMENDMENT. The terms of this Agreement may be amended from time to time by the Committee in its sole discretion in any manner that it deems appropriate (including, but not limited to, the acceleration provisions), including, without limitation, in order to satisfy applicable requirements of Sections 162(m) and Section 409A of the Code, as amended from time to time, (whether or not your rights are adversely affected).

11. BINDING ACTIONS. Any action taken or decision made by the Committee or its designees arising out of or in connection with the construction, administration, interpretation or effect of the Plan or this Agreement shall lie within its sole and absolute discretion, as the case may be, and shall be final, conclusive and binding on you and all persons claiming under or through you. By accepting this grant or other benefit under the Plan, you and each person claiming under or through you shall be conclusively deemed to have indicated acceptance and ratification of, and consent to, any action taken under the Plan by the Committee or its designees.

12. NO RIGHT TO CONTINUED EMPLOYMENT. The grant of 2007 Units shall not confer on you any right to be retained in the employ of Holdings or a Subsidiary, or to receive subsequent units or other awards under the Plan. The right of Holdings or any Subsidiary to terminate your employment with it at any time or as otherwise provided by any agreement between Holdings or any Subsidiary and you is specifically reserved.

13. APPLICABLE LAW. The validity, construction, interpretation, administration, and effect of the Plan, and of its rules and regulations, and rights relating to the Plan and to this Agreement, shall be governed by the substantive laws, but not the choice of law rules, of the State of Delaware.

14. WITHHOLDING / DEDUCTIONS. Holdings shall have the right to deduct applicable taxes from all amounts payable to you arising as a result of the grant, vesting or payment hereunder. It shall be a condition to the obligation of Holdings to deliver shares of Common Stock hereunder (a) that you (or, in event of your death, your estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of your death) pay to Holdings or its designee, upon its demand, in accordance with the Plan, either in the form of cash or freely transferable shares of Common Stock such amount as may be required for the purpose of satisfying its obligation or the obligation of any other person to withhold or satisfy any taxes required by law which are incurred by reason of or are otherwise due as a result of the grant, vesting or the delivery of such shares of Common Stock, and (b) that where determined necessary or appropriate by the Firm in its sole discretion, you direct the sale of any shares of Common Stock delivered in respect of any 2007 Units to satisfy any such amounts in Paragraph 14(a) hereof, and (c) that you (or, in the event of your death, your estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of your death) provide Holdings with any forms, documents or other information reasonably required by Holdings in connection with the

grant or vesting of the 2007 Units or delivery of shares of Common Stock hereunder. If the amount requested for the purpose of satisfying the withholding or other tax obligation is not paid, you hereby direct Holdings to withhold shares of Common Stock and / or related dividend equivalents and to otherwise sell shares of Common Stock delivered hereunder in order to fulfill any such obligation. Holdings shall further have the right to deduct from all amounts remaining payable to you after satisfaction of the minimum statutory withholding obligations described above, the amount of any deficit, debt, tax obligation or other liability or obligation of any kind which you may at that time have with respect to Holdings or any Subsidiary; provided, however, that no such right to deduct or offset shall arise or otherwise be deemed to arise until the date upon which shares of Common Stock are deliverable hereunder.

15. CODE SECTION 409A. It is intended that none of the 2007 Units or payments otherwise due hereunder shall be deferred, accelerated, extended, paid out or modified in a manner that would result in the imposition upon you of an additional tax under Section 409A of the Code; provided that neither Holdings nor any of its employees or representatives shall have any liability to you with respect to any such taxes. In the event that it is reasonably determined by the Committee that, as a result of Section 409A of the Code, payments hereunder may not be made at the time contemplated by the terms of this Agreement or the Plan, as the case may be, without causing you to be subject to taxation under Section 409A of the Code, Holdings will make such payment on the first day that would not result in your incurring any tax liability under Section 409A of the Code. If you are a "specified employee" (within the meaning of Section 409A(a)(2)(B)(i) of the Code), payments and/or deliveries of shares of Common Stock that are linked to the date of your separation from service shall not be made prior to the date which is six (6) months after the date of your separation from service Holdings and its affiliates, determined in accordance with Section 409A of the Code and the regulations promulgated thereunder.

ANNEX A: DEFINITIONS

"Appropriate Officer" means the Chief Executive Officer or Chief Operating Officer of Holdings (or their respective designees).

"Cause" means a material breach by a person of an employment contract between the person and Holdings or any Subsidiary, failure by a person to devote substantially all business time exclusively to the performance of his or her duties for Holdings or any Subsidiary, willful misconduct, dishonesty related to the business and affairs of Holdings or any Subsidiary, conviction of a felony or of a misdemeanor constituting a statutory disqualification under U.S. securities laws (or failure to contest prosecution for a felony or such a misdemeanor), habitual or gross negligence in the performance of a person's duties, solicitation of employees of Holdings or any Subsidiary to work at another company, improper use or disclosure of confidential information, the violation of policies and practices adopted by Holdings or any Subsidiary including, but not limited to the Code of Conduct, or a material violation of the conflict of interest, proprietary information or business ethics policies of Holdings or any Subsidiary, or such other circumstances as may be determined in the sole discretion of an Appropriate Officer. For avoidance of doubt, for purposes of the preceding sentence, a material breach of an employment contract or violation of policies would include, as applicable, the employee's

violation of any policy or employment agreement relating to the obligation to provide advance notice of resignation from Holdings or any subsidiary.

"Change in Capitalization" means the occurrence of a circumstance described in Section 14 of the Plan.

"Committee" shall mean the Compensation and Benefits Committee of the Incumbent Board (see definition of Change in Control in the Plan).

"Competitive Activity" means involvement (whether as an employee, proprietor, consultant or otherwise) with any person or entity (including any company and its affiliates) engaged in any business activity which is materially competitive with any business carried on by Holdings or any of its Subsidiaries or affiliates on the date of termination of a person's employment with Holdings and any of its Subsidiaries, as determined in the sole discretion of an Appropriate Officer.

"Detrimental Activity" means (i) using information received during a person's employment with Holdings or any of its Subsidiaries relating to the business affairs of Holdings or any of its Subsidiaries, affiliates or clients, in breach of such person's undertaking to keep such information confidential; (ii) directly or indirectly persuading or attempting to persuade, by any means, any employee of Holdings or any of its Subsidiaries or affiliates to terminate employment with any of the foregoing or to breach any of the terms of his or her employment with the foregoing; (iii) directly or indirectly making any statement that is, or could be, disparaging of Holdings, its Subsidiaries or affiliates, or any of their affiliates (except as necessary to respond truthfully to any inquiry from applicable regulatory authorities or to provide information pursuant to legal process); or (iv) directly or indirectly engaging in any activity that is, or could be, substantially injurious to the financial condition, reputation, or goodwill of Holdings or its Subsidiaries or affiliates, in each case as determined in the sole discretion of an Appropriate Officer.

"Disability" means a disability under both the Long-Term Disability Insurance Plan and Social Security Act.

"Discount Units" shall mean the number of 2007 Units (and any dividend equivalents related thereto that are not Principal Units. If you were a Managing Director of Holdings or any Subsidiary for the fiscal year ended November 30, 2007, thirty percent (30%) of your 2007 Units as of the date of grant will be Discount Units. If you are an employee other than a Managing Director of Holdings or any Subsidiary for the fiscal year ended November 30, 2007, twenty-five percent (25%) of your 2007 Units as of the date of grant will be Discount Units.

"Full Career Termination" means a Termination when (i) a person has at least 20 years of service, (ii) the person is at least 45 years old, and the person has at least 10 years of service; or (iii) the person is at least 50 years old, and the person has at least 5 years of service.

"Principal Units" shall mean the number of 2007 Units (and any dividend equivalents related thereto) related to the undiscounted base portion of the award. If you were a Managing Director of Holdings or any Subsidiary for the fiscal year ended November 30, 2007, seventy percent (70%) of your 2007 Units as of the date of grant will be Principal Units. If you are an employee other than a Managing Director of Holdings or any Subsidiary for the fiscal year ended November 30,

2007, seventy-five percent (75%) of your 2007 Units as of the date of grant will be Principal Units.

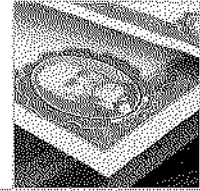
"Share Payment Date" means November 30, 2012.

"Termination" means the end of active employment with Holdings or a Subsidiary. The characterization of the circumstances of Termination is determined in the sole discretion of an Appropriate Officer.

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EXHIBIT 9



2003 EQUITY AWARD PROGRAM

CONTINGENT STOCK AWARD LETTER

Pursuant to the Plan, Lehman Brothers Holdings Inc. ("Holdings") hereby grants to you (the "Participant"), as of December 10, 2003 (the "Date of Grant"), contingent rights to receive the number of Shares set forth on the award statement with your name delivered to you herewith (the "Award Shares")—which may be adjusted under section 7 of this Letter—subject to the terms of the Plan and to fulfillment of the conditions and contingencies set out in this letter (the "Letter").

This Letter will entitle the Participant to receive the Award Shares, under and on fulfillment of the contingencies and conditions specified herein. You have been provided with a copy of the Plan, which is incorporated in this Letter by reference and made a part hereof, and a copy of the Plan prospectus. The Plan and the prospectus should be carefully examined. In the event of any conflict or ambiguity between the Letter and the Plan, the terms of the Plan shall govern. All capitalized terms used herein and not defined in the Appendix to this Letter shall have the meaning ascribed to such terms under the Plan.

1. **GRANT.** The rights granted to the Participant under this Letter are a contingent entitlement to, and a right to receive, the Award Shares, and the Participant shall become entitled to receive the Award Shares on November 30, 2008 (the "Maturity Date"), subject to fulfillment of the conditions set out in this Letter.

2. ENTITLEMENT TO RECEIVE COMMON STOCK.

(a) **General Rule.** Subject to other provisions of this section 2, the Participant shall become entitled to receive the Award Shares on the Maturity Date, but in the event of Termination of the Participant's employment with the Group for any reason or notification of termination prior to January 30, 2004, or in the event that the Participant engages in any Detrimental Activity at any time prior to the Maturity Date, the Participant will not become entitled to any of the Award Shares and all rights hereunder shall terminate.

(b) **Voluntary Termination with Competitive Activity.** In the event of the Participant's voluntary Termination, and if the Participant engages in Competitive Activity:

(i) The Participant will not become entitled to any Discount Award Shares on the Share Payment Date; and

(ii) If such Termination occurs prior to November 30, 2005, the Participant will not become entitled to any Principal Award Shares on the Share Payment Date; and

(iii) If such Termination occurs on or subsequent to November 30, 2005, the Participant shall become entitled, on the Share Payment Date, to the Principal Award Shares provided that the Participant does not engage in Detrimental Activity prior to the Share Payment Date.

(c) **Voluntary Termination without Competitive Activity.** In the event of the Participant's voluntary Termination on or after January 30, 2004:

(i) Provided that the Participant does not engage in Competitive Activity or Detrimental Activity from the date of his Termination to the Share Payment Date, the Participant shall, on the Share Payment Date become entitled to receive all the Principal Award Shares; and

(ii) If such Termination occurs prior to November 30, 2005 and the Participant engages in Competitive Activity or Detrimental Activity prior to the Share Payment Date, the Participant shall not become entitled to any Principal Award Shares; and

(iii) If such Termination occurs on or subsequent to November 30, 2005, and the Participant engages in Competitive Activity prior to the Share Payment Date, the Participant shall become entitled, on the Share Payment Date, to the Principal Award Shares, provided that the Participant does not engage in Detrimental Activity prior to the Share Payment Date; and

(iv) Provided that the Participant does not engage in Competitive Activity or Detrimental Activity before the Share Payment Date, the Participant shall on the Share Payment Date become entitled to 20% of the Discount Award Shares multiplied by each complete year of employment with the Group after November 30, 2003 and before Termination; and

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- (v) However, if such Termination is a Full Career Termination (as defined in the Appendix), and the Participant does not engage in Competitive Activity or Detrimental Activity prior to the Share Payment Date, the Participant shall on the Share Payment Date become entitled to the entire Discount Award Shares; and
- (vi) If the Participant engages in Competitive Activity or Detrimental Activity prior to the Share Payment Date, the Participant shall not become entitled to any Discount Award Shares.
- (d) Involuntary Termination with Cause.** In the event of the Participant's involuntary Termination with Cause at any time prior to the Maturity Date, the Participant shall not on that date become entitled to any Award Shares.
- (e) Involuntary Termination without Cause.** In the event of the Participant's involuntary Termination without Cause on or after January 30, 2004:
- (i) Provided that the Participant does not engage in Detrimental Activity from the date of his Termination to the Share Payment Date, the Participant shall on the Share Payment Date become entitled to receive all the Principal Award Shares; and
- (ii) Provided that the Participant does not engage in Detrimental Activity prior to the Share Payment Date, the Participant shall on the Share Payment Date become entitled to 20% of the Discount Award Shares multiplied by each complete year of employment with the Group after November 30, 2003 and before Termination; and
- (iii) However, if such Termination is a Full Career Termination, and the Participant does not engage in Detrimental Activity prior to the Share Payment Date, the Participant shall on the Share Payment Date become entitled to the entire Discount Award Shares.
- (f) Retirement.** Notwithstanding sections 2(a) – (e) of this Letter, in the event of the Participant's Retirement on or after January 30, 2004 and provided the Participant does not engage in Competitive Activity or Detrimental Activity, the Participant shall immediately become entitled to receive all the Principal Award Shares and all the Discount Award Shares. The Participant will receive freely transferable shares of common stock for each Award Share he is entitled to receive, as soon as practicable after his Retirement. If the Participant engages in Competitive Activity, the provisions specified in section 2(b) of this Letter shall apply as of the date of his Retirement, and the Participant shall be obligated to repay to Holdings the full gross amounts or Shares received in excess of those which the Participant would have received under section 2(b). If the Participant engages in Detrimental Activity, the Participant shall be obligated to repay to Holdings the full gross amounts or Shares the Participant received under this Letter.
- (g) Occurrence of a Bankruptcy Distribution Event, Death, or Disability.** Notwithstanding sections 2(a) – (e) of this Letter, in the event on or after January 30, 2004 of:
- (i) A Bankruptcy Distribution Event, the Participant shall immediately become entitled to receive all the Principal Award Shares and the Discount Award Shares; and
- (ii) The Participant's death or Disability or the Participant's death or Disability following (aa) the Participant's voluntary Termination without Competitive Activity; or (bb) the Participant's involuntary Termination without Cause, the Participant shall immediately become entitled to receive any outstanding Principal Award Shares and Discount Award Shares.

3. AFFIDAVIT. In the event of the Termination of the Participant on or after January 30, 2004, the Participant may be requested, from time to time, after that Termination, to complete and sign an affidavit with respect to Competitive Activity or Detrimental Activity, which includes representations and authorizes Holdings to verify the representations. Any failure on the part of the Participant to complete, sign, and return the affidavit within 60 days may prevent the Participant from becoming entitled to any of the Award Shares.

4. INTERIM PAYMENTS AND FURTHER AWARDS. Holdings undertakes that provided, when dividends are declared and paid on any Shares on or after January 30, 2004, the Participant continues to be prospectively entitled to some or all of the Award Shares on fulfillment of the conditions or contingencies set out in section 2 of this Letter, it will, or it will procure that the Group Company employing the Participant, pay to the Participant cash amounts, or award to the Participant additional Award Shares, with a value equal to such dividends paid on a corresponding number of Shares, net of any taxes applicable thereto. The Participant shall become entitled to any such additional Award Shares and/or cash amounts at the same time or times and on fulfillment of the same conditions and contingencies as those applicable to the original Award Shares to which those additional Award Shares and/or cash amounts relate.

5. TRANSFER OF SHARES AND LIMITATION ON OBLIGATIONS. Subject to fulfillment of the conditions specified in section 2 of the Letter and receipt of any required taxes, Holdings or the Group Company employing the Participant shall transfer to the Participant the appropriate number of Shares and certificates therefor properly delivered on the date when such Shares are due to be delivered hereunder. The obligations of each and every Group Company shall be limited to the delivery to the Participant of Shares and in no way shall any Group Company become obligated to pay cash to the Participant, save as provided under section 4 or 8 of this Letter.

6. NON-ASSIGNMENT. No rights conferred by this Letter on the Participant shall be capable of being sold, transferred, assigned, pledged, hypothecated, or otherwise encumbered or disposed of, except by will or under the laws of descent and distribution. Any attempt to violate this section by the Participant or any other person claiming under or through him shall be null and void and without effect and neither Holdings nor any Group Company shall be or become obligated to issue or transfer Shares under this Letter.

7. EQUITABLE ADJUSTMENT. In the event of a Change in Capitalization occurring after the Date of Grant and before the Participant has become entitled to Shares under this Letter, the number and kind of Shares which may be issued to the Participant shall be adjusted so as to reflect that change.

8. CHANGE IN CONTROL. Except as set forth below, upon the occurrence of a Hostile Change in Control, the Participant shall become immediately entitled to all the Award Shares not already belonging to him, any sales restrictions shall lapse and Shares shall be issued. Except as set forth below, upon the occurrence of a Friendly Change in Control, the Participant shall receive, in the same form of consideration as that received by shareholders generally, the undiscounted U.S. Dollar market value (at the time of grant) for his Award Shares, and the excess of the price paid by an acquiror over such undiscounted U.S. Dollar market value shall become receivable after the earlier of two years from the date of that Friendly Change in Control or the first to occur of the dates set out under section 2 of this Letter (the "Deferred Period"), and only if, in either case, the conditions and contingencies set out in section 2 of this Letter are

satisfied at the end of the Deferred Period. Neither of the foregoing shall be effective to the extent that the Participant is able to direct the exercise of tender or voting rights in respect of Shares held in Trust, in which case the Participant will only be issued Shares or receive such undiscounted market value, in the same form of consideration as that received by shareholders generally (and after the Deferred Period, the excess price) in respect of such Shares upon successful completion of a Change in Control.

9. TREATMENT IN BANKRUPTCY. (a) If the Participant is an employee of Holdings, Holdings agrees to deliver, and (b) if the Participant is an employee of a subsidiary, Holdings agrees to deliver to (or at the direction of) such subsidiary, Shares on the date on which such Shares become due to be delivered under this Letter. If the Participant is an employee of a subsidiary, Holdings' obligation in clause (b) of the preceding sentence is created expressly for the benefit of the Participant and the Participant shall have the full right to enforce Holdings' obligation to deliver Shares as if such obligation was made directly in favour of the Participant. All of the Participant's claims arising from, or in connection with, or in any way relating to, any failure of any Group Company to deliver to the Participant Shares on the date on which Shares become and are due to be delivered to the Participant under this Letter shall be deemed, in the event of a bankruptcy of Holdings, to be claims for damages arising from the purchase or sale of Shares, within the meaning of section 510(b) of the Bankruptcy Code and shall have in such bankruptcy the same priority as, and no greater priority than, a holding of Shares.

10. AMENDMENT. The terms of this Letter may be amended from time to time by the Committee in its sole discretion in any manner that it deems appropriate (including, but not limited to, acceleration of the entitlement of the Participant to Shares, or interim payments under section 4, of this Letter).

11. BINDING ACTIONS. Any action taken or decision made by the Committee or its designees arising out of or in connection with the construction, administration, interpretation, or effect of this Letter or the Plan shall lie within its sole and absolute discretion, as the case may be, and shall be final, conclusive, and binding on the Participant and all persons claiming under or through the Participant. By accepting this Letter or other benefit under the Plan, the Participant and each person claiming under or through the Participant shall be conclusively deemed to have confirmed acceptance and ratification of, and consent to, any action taken under the Plan or this Letter by the Committee or its designees.

12. NO RIGHT TO CONTINUED EMPLOYMENT. Neither the Letter nor the Plan nor any action taken or omitted to be taken hereunder or thereunder shall be deemed to create or confer upon the Participant any right to be retained in the employment of any Group Company, or to receive subsequent Contingent Stock Awards or other Awards under the Plan. The right of any Group Company to terminate the Participant's employment at any time, or as otherwise provided by any agreement between the Participant and any Group Company, is specifically reserved.

13. APPLICABLE LAW. The validity, construction, interpretation, administration, and effect of the Plan and of its rules and regulations and rights relating to the Plan, and of this Letter and rights arising under it, shall be governed by the substantive laws, but not the choice of law rules, of the State of Delaware, United States of America.

14. SUBMISSION TO JURISDICTION. The Participant, Holdings, and any Group Company employing the Participant agree that any issue concerning or relating to this Letter or to the acquisition or possible acquisition of Shares by the Participant

hereunder shall be referred to the courts of the State of Delaware, United States of America, for determination.

15. STOCKHOLDER RIGHTS.

The Participant and any transferee of this Letter following his death shall have no rights as a stockholder with respect to any Share covered by this Letter until he shall have become the holder of record of such Share.

16. TAXES/DEDUCTIONS. It shall be a condition of the obligation of any Group Company to issue or transfer Shares under this Letter that (a) the Participant (or, in the event of his death, his estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of his death) pay to the relevant Group Company, on its demand, such amount as is required to satisfy its obligation or the obligation of any other person to account for any taxes properly payable in respect of the Shares or any interim payments under section 4 of this Letter to which the Participant becomes entitled, and (b) the Participant (or, in the event of his death, his estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of his death) provide the relevant Group Company with any duly completed and executed forms, documents or other information reasonably required by the Group Company in respect of those Shares or interim payments. If the amount required for the payment of any such taxes is not paid, the Group Company may refuse to issue or transfer the relevant Shares and/or related interim payments or take any other action they deem necessary to fulfill all obligations in respect of such taxes. Any Group Company shall further have the right to deduct from all amounts remaining payable to the Participant after satisfaction of any taxes, the amount of any deficit, debt, tax obligation or other liability or obligation of any kind which the Participant may at that time have with respect to any Group Company.

17. COMPLIANCE WITH LAW. Notwithstanding any of the provisions hereof, the Participant hereby agrees that the Group Company will not be obligated to issue or transfer any Shares to the Participant hereunder, if the issuance or transfer of such Shares shall constitute a violation by the Participant or any Group Company of any provisions of any law or regulation of any governmental authority applicable to the Letter. Any determination in this connection by Holdings shall be final, binding, and conclusive.

18. ENTIRE AGREEMENT. The Letter sets forth the entire agreement and understanding between the parties hereto and supersedes all prior agreements relating to the subject matter hereof.

APPENDIX

1. In the Letter, these terms shall have these meanings:

"Affiliate" means any corporation or other entity, which is not a subsidiary but as to which Holdings possesses a direct or indirect ownership interest and has representation on the board of directors or any similar governing body.

"Appropriate Officer" means the Chief Executive Officer or Chief Operating Officer of Holdings (or their respective designees).

"Bankruptcy Distribution Event" means the earlier to occur of (i) the date of, but immediately prior to, distribution to holders of claims and interests upon the substantial consummation of a confirmed plan of reorganization of Holdings in a Chapter 11 case under Title 11 of the United States Code, 11 U.S.C. §§101 et seq. (the "Bankruptcy Code"), or (ii) the date of, but immediately prior to, distributions to holders of claims and interests upon the liquidation of Holdings in a Chapter 7 case under the Bankruptcy Code.

"**Beneficial Ownership**" has the same meaning as in Rule 13d-3 promulgated under the Exchange Act.

"**Board**" means the board of directors of Holdings.

"**Cause**" means a material breach by a Participant of his employment contract with any one or more of the Group Companies, failure by the Participant to devote substantially all business time exclusively to the performance of his employment with a Group Company, willful misconduct, dishonesty relating to the business and affairs of any Group Company, conviction of a criminal offense being or equivalent to a felony or a misdemeanor constituting a statutory disqualification under United States securities laws (or failure to contest prosecution for a felony or such a misdemeanor), habitual or gross negligence in the performance of the Participant's duties under his employment with a Group Company, solicitation of employees of a Group Company to work for any employer other than a Group Company, improper use or disclosure of information relating to any Group Company, its business affairs or clients, the violation of policies and practices adopted by any Group Company or a material violation of the conflict of interest, proprietary information or business ethics policies of any Group Company, or such other circumstances as may be determined in the sole discretion of an Appropriate Officer.

"**Committee**" means the Compensation and Benefits Committee of the incumbent Board (see definition of change in control in the plan).

"**Competitive Activity**" means involvement (whether as an employee, proprietor, consultant, or otherwise) with any person or entity (including any company and its affiliates) engaged in any business activity which is materially competitive with any business carried on by any Group Company on the date of termination of the Participant's employment with any of the Group Companies, as determined in the sole discretion of an Appropriate Officer.

"**Detrimental Activity**" means at any time (i) using confidential information received during employment with Holdings or any other Group Company relating to the business affairs of any Group Company, any of their affiliates, or any of their clients, in breach of such Participant's undertaking to keep such information confidential; (ii) direct or indirect persuasion or any attempt to persuade by any means, any employee of any Group Company to terminate his employment with any of those corporations or entities or to breach any of the terms of his employment with any Group Company; (iii) directly or indirectly making any statement that is, or could be, disparaging of Holdings or any Group Company, or any of their employees (except as necessary to respond truthfully to any inquiry from applicable regulatory authorities or to provide information pursuant to legal process); or (iv) directly or indirectly engaging in any activity that is substantially injurious to the financial condition, reputation, or goodwill of Holdings or any Group Company, in each case as determined in the sole discretion of an Appropriate Officer.

"**Disability**" means a disability which meets the criteria under both the Long-Term Disability Insurance Plan and the United States Social Security Act.

"**Discount Award Shares**" means Shares equal in number to 25% of the Award Shares.

"**Exchange Act**" means the United States Securities Exchange Act of 1934, as later amended, modified, or substituted.

"**Friendly Change in Control**" means any Change in Control, which is not a Hostile Change in Control.

"**Full Career Termination**" means a Termination when (i) a Participant has at least 20 years of service or (ii) a Participant meets all of the following criteria: (x) the Participant's age plus years of service with Holdings or any subsidiary equals at least 65, (y) the Participant is at least 45 years old, and (z) the Participant has at least 10 years of service with Holdings or any subsidiary.

"**Group**" means Holdings and all its Subsidiaries and Affiliates, and

"**Group Company**" shall mean any entity within the Group.

"**Hostile Change in Control**" means the occurrence of a Change in Control, without the prior approval of a majority of the independent members of the Incumbent Board.

"**Person**" has the same meaning as in section 13(d) or 14(d) of the Exchange Act.

"**Plan**" means the Lehman Brothers Holdings Inc. Employee Incentive Plan.

"**Principal Award Shares**" means Shares equal in number to 75% of the Award Shares.

"**Retirement**" means a Termination of employment with all Group Companies which meets the criteria for retirement under Holdings' qualified defined benefit pension plan, provided that the person has signed an agreement not to engage in Competitive Activity or Detrimental Activity, in a form prescribed in the sole discretion of an Appropriate Officer.

"**Share**" means a vested share of Common Stock of Holdings, par value of \$0.10 per share.

"**Share Payment Date**" means as soon as practicable after the earlier of (i) November 30, 2008 or (ii) the end of the fiscal quarter immediately following the first anniversary of the Participant's termination of employment.

"**Subsidiary**" means any corporation or other Person of which a majority of its voting power or its voting equity securities or equity interest is owned directly or indirectly by Holdings.

"**Termination**" means the end of employment with Holdings or any Group Company. The date of Termination and the reason for Termination are as determined in the sole discretion of an Appropriate Officer.

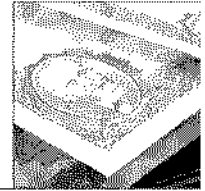
"**Voting Securities**" means the outstanding Shares of capital stock of Holdings having ordinary voting power in the election of directors.

2. In this Letter, any reference to the singular shall include the plural and vice versa and any reference to the masculine gender shall include a reference to all other genders.

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EXHIBIT 10



2004 EQUITY AWARD PROGRAM

CONTINGENT STOCK AWARD LETTER

Pursuant to the Plan, Lehman Brothers Holdings Inc. ("Holdings") hereby grants to you (the "Participant"), as of December 9, 2004 (the "Date of Grant"), contingent rights to receive the number of Shares set forth on the award statement with your name delivered to you herewith (the "Award Shares")—which may be adjusted under section 7 of this Letter—subject to the terms of the Plan and to fulfillment of the conditions and contingencies set out in this letter (the "Letter").

This Letter will entitle the Participant to receive the Award Shares, under and on fulfillment of the contingencies and conditions specified herein. You have been provided with a copy of the Plan, which is incorporated in this Letter by reference and made a part hereof, and a copy of the Plan prospectus. The Plan and the prospectus should be carefully examined. In the event of any conflict or ambiguity between the Letter and the Plan, the terms of the Plan shall govern. All capitalized terms used herein and not defined in the Appendix to this Letter shall have the meaning ascribed to such terms under the Plan.

1. GRANT. The rights granted to the Participant under this Letter are a contingent entitlement to, and a right to receive, the Award Shares, and the Participant shall become entitled to receive the Award Shares on November 30, 2009 (the "Maturity Date"), subject to fulfillment of the conditions set out in this Letter.

2. ENTITLEMENT TO RECEIVE COMMON STOCK.

- (a) General Rule.** Subject to other provisions of this section 2, the Participant shall become entitled to receive the Award Shares on the Maturity Date.
- (b) Effect of Detrimental Activity.** Notwithstanding any other provision of this Agreement, if the Participant engages in any Detrimental Activity at any time prior to the Share Payment Date, the Participant will not become entitled to any of the Award Shares and all rights hereunder shall terminate.
- (c) Occurrence of Death, Disability.** In the event of the occurrence of the Participant's death or Disability, all outstanding Award Shares

held by the Participant shall become immediately payable and the Participant (or, in the event of his death, his estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of his death) shall, as soon as practicable thereafter, receive freely transferable shares of Common Stock.

- (d) Effect of Termination.** In the event of Termination of the Participant's employment with the Group for any reason or notification of Termination prior to January 31, 2005, the Participant will not become entitled to any of the Award Shares and all rights hereunder shall terminate. In the event of any Termination not described in the preceding sentence, the following rules shall apply:

- (i) Voluntary Termination with Competitive Activity.** In the event of the Participant's voluntary Termination with Competitive Activity:

- (i) The Participant will not become entitled to any Discount Award Shares on the Share Payment Date; and
- (ii) If such Termination occurs prior to November 30, 2006, the Participant will not become entitled to any Principal Award Shares on the Share Payment Date; and
- (iii) If such Termination occurs on or subsequent to November 30, 2006, the Participant shall become entitled, on the Share Payment Date, to the Principal Award Shares.

- (ii) Voluntary Termination without Competitive Activity.** In the event of the Participant's voluntary Termination without Competitive Activity:

- (i) The Participant shall, on the Share Payment Date, become entitled to receive all the Principal Award Shares; and
- (ii) The Participant shall on the Share Payment Date become entitled to 20% of the Discount Award Shares multiplied by each complete year of employment with the Group after November 30, 2004 and before Termination; and

LEHMAN BROTHERS

DEFERRED PAYMENTS AND FURTHER AWARDS.

(iii) However, if such Termination is a Full Career Termination, the Participant shall on the Share Payment Date become entitled to the entire Discount Award Shares; and

(iv) If the Participant engages in Competitive Activity prior to the Share Payment Date, the provisions specified in Paragraph 2(d)(i) shall apply.

(iii) Involuntary Termination with Cause. In the event of the Participant's involuntary Termination with Cause at any time prior to the Maturity Date, the Participant shall not on that date become entitled to any Award Shares.

(iv) Involuntary Termination without Cause. In the event of the Participant's involuntary Termination without Cause:

(i) The Participant shall on the Share Payment Date become entitled to receive all the Principal Award Shares; and

(ii) The Participant shall on the Share Payment Date become entitled to 20% of the Discount Award Shares multiplied by each complete year of employment with the Group after November 30, 2004 and before Termination; and

(iii) However, if such Termination is a Full Career Termination, the Participant shall on the Share Payment Date become entitled to the entire Discount Award Shares.

(v) Retirement. Notwithstanding sections 2(d)(i), (ii), (iii) and (iv) of this Letter, in the event of the Participant's Retirement and provided the Participant does not engage in Competitive Activity or Detrimental Activity, the Participant shall immediately become entitled to receive all the Principal Award Shares and all the Discount Award Shares. The Participant will receive freely transferable shares of common stock for each Award Share he is entitled to receive, as soon as practicable after his Retirement. If the Participant engages in Competitive Activity, the provisions specified in section 2(d)(i) of this Letter shall apply as of the date of his Retirement, and the Participant shall be obligated to repay to Holdings the full gross amounts or Shares received in excess of those which the Participant would have received under section 2(d)(i). If the Participant engages in Detrimental Activity prior to the Share Payment Date, the Participant shall be obligated to repay to Holdings the full gross amounts or Shares the Participant received under this Letter.

(vi) Occurrence of Death or Disability following a Termination. Notwithstanding sections 2(d)(i), (ii), (iii) and (iv) of this Letter, in the event of the occurrence of the Participant's death or Disability following a Termination described in Paragraph 2(d)(ii) or (iv) above, the Participant (or, in the event of his death, his estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of his death) shall at that time immediately become entitled to receive any outstanding Principal Award Shares and Discount Award Shares.

Any shares that become payable pursuant to this Paragraph 2(d) (other than Paragraph 2(d)(v) or (vi)) shall be issued to you on the Share Payment Date, subject to the application of Paragraph 2(b). Any remaining Award Shares that are not payable pursuant to the provisions of the Paragraph 2(d) shall be canceled by Holdings.

3. AFFIDAVIT. In the event of the Termination of the Participant on or after January 31, 2005, the Participant may be requested, from time to time, after that Termination, to complete and sign an affidavit with respect to Competitive Activity or Detrimental Activity, which includes representations and authorizes Holdings to verify the representations. Any failure on the part of the Participant to complete, sign and return the affidavit as required may prevent the Participant from becoming entitled to any of the Award Shares.

Holdings undertakes that provided, when dividends are declared and paid on any Shares on or after January 31, 2005, the Participant continues to be prospectively entitled to some or all of the Award Shares on fulfillment of the conditions or contingencies set out in section 2 of this Letter, it will, or it will procure that the Group Company employing the Participant, pay to the Participant cash amounts, or award to the Participant additional Award Shares, with a value equal to such dividends paid on a corresponding number of Shares, net of any taxes applicable thereto. The Participant shall become entitled to any such additional Award Shares and/or cash amounts at the same time or times and on fulfillment of the same conditions and contingencies as those applicable to the original Award Shares to which those additional Award Shares and/or cash amounts relate.

5. TRANSFER OF SHARES AND LIMITATION ON OBLIGATIONS. Subject to fulfillment of the conditions specified in section 2 of the Letter and receipt of any required taxes, Holdings or the Group Company employing the Participant shall transfer to the Participant the appropriate number of Shares and certificates therefor properly delivered on the date when such Shares are due to be delivered hereunder. The obligations of each and every Group Company shall be limited to the delivery to the Participant of Shares and in no way shall any Group Company become obligated to pay cash to the Participant, save as provided under section 4 or 8 of this Letter.

6. NON-ASSIGNMENT. No rights conferred by this Letter on the Participant shall be capable of being sold, transferred, assigned, pledged, hypothecated, or otherwise encumbered or disposed of, except by will or under the laws of descent and distribution. Any attempt to violate this section by the Participant or any other person claiming under or through him shall be null and void and without effect and neither Holdings nor any Group Company shall be or become obligated to issue or transfer Shares under this Letter.

7. EQUITABLE ADJUSTMENT. In the event of a Change in Capitalization occurring after the Date of Grant and before the Participant has become entitled to Shares under this Letter, the number and kind of Shares which may be issued to the Participant shall be adjusted so as to reflect that change.

8. CHANGE IN CONTROL. Except as set forth below, upon the occurrence of a Change in Control without the prior approval of a majority of the independent members of the Incumbent Board, the Participant shall become immediately entitled to all the Award Shares not already belonging to him, any sales restrictions shall lapse and Shares shall be issued. Except as set forth below, upon the occurrence of a Change in Control with the prior approval of a majority of the independent members of the Incumbent Board, the Participant shall receive in the same form of consideration as that received by shareholders generally, the lesser of (a) the undiscounted market value (at the time of grant) of the shares of Common Stock underlying his outstanding Award Shares or (b) the price paid by an acquirer for such shares of Common Stock, and the excess, if any, of the price paid by an acquirer over such undiscounted market value shall be deferred for the shorter of (x) two years following such Change in Control or (y) the term of any remaining restrictions (the "Deferred Period"), and only if, in either case, the conditions and contingencies set out in section 2 of this Letter are satisfied at the end of the Deferred Period. Neither of the foregoing shall be effective to the extent that the Participant is able to direct the exercise of tender or voting rights in respect of Shares held in Trust, in which case the Participant will only be issued Shares or receive such undiscounted market value, in the same form of consideration as that received by shareholders generally (and after the Deferred Period, the

excess price) in respect of such Shares upon successful completion of a Change in Control.

9. TREATMENT IN BANKRUPTCY. (a) If the Participant is an employee of Holdings, Holdings agrees to deliver, and (b) if the Participant is an employee of a Group Company, Holdings agrees to deliver to (or at the direction of) such Group Company, Shares on the date on which such Shares become due to be delivered under this Letter. If the Participant is an employee of a Group Company, Holdings' obligation in clause (b) of the preceding sentence is created expressly for the benefit of the Participant and the Participant shall have the full right to enforce Holdings' obligation to deliver Shares as if such obligation was made directly in favour of the Participant. All of the Participant's claims arising from, or in connection with, or in any way relating to, any failure of any Group Company to deliver to the Participant Shares on the date on which Shares become due to be delivered to the Participant under this Letter shall be deemed, in the event of a bankruptcy of Holdings, to be claims for damages arising from the purchase or sale of Shares, within the meaning of section 510(b) of the Bankruptcy Code and shall have in such bankruptcy the same priority as, and no greater priority than, a holding of Shares.

10. AMENDMENT. The terms of this Letter may be amended from time to time by the Committee in its sole discretion in any manner that it deems appropriate (including, but not limited to, acceleration of the entitlement of the Participant to Shares, or interim payments under section 4, of this Letter).

11. BINDING ACTIONS. Any action taken or decision made by the Committee or its designees arising out of or in connection with the construction, administration, interpretation or effect of this Letter or the Plan shall lie within its sole and absolute discretion, as the case may be, and shall be final, conclusive and binding on the Participant and all persons claiming under or through the Participant. By accepting this Letter or other benefit under the Plan, the Participant and each person claiming under or through the Participant shall be conclusively deemed to have confirmed acceptance and ratification of, and consent to, any action taken under the Plan or this Letter by the Committee or its designees.

12. NO RIGHT TO CONTINUED EMPLOYMENT. Neither the Letter nor the Plan nor any action taken or omitted to be taken hereunder or thereunder shall be deemed to create or confer upon the Participant any right to be retained in the employment of any Group Company, or to receive subsequent Contingent Stock Awards or other Awards under the Plan. The right of any Group Company to terminate the Participant's employment at any time, or as otherwise provided by any agreement between the Participant and any Group Company, is specifically reserved.

13. APPLICABLE LAW. The validity, construction, interpretation, administration, and effect of the Plan and of its rules and regulations and rights relating to the Plan, and of this Letter and rights arising under it, shall be governed by the substantive laws, but not the choice of law rules, of the State of Delaware, United States of America.

14. SUBMISSION TO JURISDICTION. The Participant, Holdings, and any Group Company employing the Participant agree that any issue concerning or relating to this Letter or to the acquisition or possible acquisition of Shares by the Participant hereunder shall be referred to the courts of the State of Delaware, United States of America, for determination.

15. TRANSFER OF SHARES/HOLDER RIGHTS. The Participant and any transferee of this Letter following his death shall have no rights as a stockholder with respect to any Share covered by this Letter until he shall have become the holder of record of such Share.

16. TAXES/DEDUCTIONS. It shall be a condition of the obligation of any Group Company to issue or transfer Shares under this Letter that (a) the Participant (or, in the event of his death, his estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of his death) pay to the relevant Group Company, on its demand, in accordance with the Plan, either in the form of cash or freely transferable shares of Common Stock, such amount as is required to satisfy its obligation or the obligation of any other person to account for any taxes properly payable in respect of the Shares or any interim payments under section 4 of this Letter to which the Participant becomes entitled, and (b) the Participant (or, in the event of his death, his estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of his death) provide the relevant Group Company with any duly completed and executed forms, documents or other information reasonably required by the Group Company in respect of those Shares or interim payments. If the amount required for the payment of any such taxes is not paid, the Group Company may refuse to issue or transfer the relevant Shares and/or related interim payments or take any other action they deem necessary to fulfill all obligations in respect of such taxes. Any Group Company shall further have the right to deduct from all amounts remaining payable to the Participant after satisfaction of any taxes, the amount of any deficit, debt, tax obligation or other liability or obligation of any kind which the Participant may at that time have with respect to any Group Company.

17. COMPLIANCE WITH LAW. Notwithstanding any of the provisions hereof, the Participant hereby agrees that the Group Company will not be obligated to issue or transfer any Shares to the Participant hereunder, if the issuance or transfer of such Shares shall constitute a violation by the Participant or any Group Company of any provisions of any law or regulation of any governmental authority applicable to the Letter. Any determination in this connection by Holdings shall be final, binding, and conclusive.

18. ENTIRE AGREEMENT. The Letter sets forth the entire agreement and understanding between the parties hereto and supersedes all prior agreements relating to the subject matter hereof.

APPENDIX

1. In the Letter, these terms shall have these meanings:

"Affiliate" means any corporation or other entity, which is not a subsidiary but as to which Holdings possesses a direct or indirect ownership interest and has representation on the board of directors or any similar governing body.

"Appropriate Officer" means the Chief Executive Officer or Chief Operating Officer of Holdings (or their respective designees).

"Board" means the board of directors of Holdings.

"Cause" means a material breach by a Participant of his employment contract with any one or more of the Group Companies, failure by the Participant to devote substantially all business time exclusively to the performance of his employment duties with a Group Company, willful misconduct, dishonesty relating to the business and affairs of any Group Company, conviction of a criminal offense being or equivalent to a felony or a misdemeanor constituting a statutory disqualification under United States securities laws (or failure to contest prosecution

for a felony or such a misdemeanor), habitual or gross negligence the performance of the Participant's duties under his employment with a Group Company, solicitation of employees of a Group Company to work for any employer other than a Group Company, improper use or disclosure of confidential information relating to any Group Company, its business affairs or clients, the violation of policies and practices adopted by any Group Company or a material violation of the conflict of interest, proprietary information or business ethics policies of any Group Company, or such other circumstances as may be determined in the sole discretion of an Appropriate Officer.

"Change in Capitalization" means the occurrence of a circumstance described in Section 14 of the Plan.

"Committee" means the Compensation and Benefits Committee of the Incumbent Board (see definition of Change in Control in the Plan).

"Competitive Activity" means involvement (whether as an employee, proprietor, consultant or otherwise) with any person or entity (including any company and its affiliates) engaged in any business activity which is materially competitive with any business carried on by any Group Company on the date of termination of the Participant's employment with any of the Group Companies, as determined in the sole discretion of an Appropriate Officer.

"Detrimental Activity" means at any time (i) using confidential information received during employment with Holdings or any other Group Company relating to the business affairs of any Group Company, any of their affiliates, or any of their clients, in breach of such Participant's undertaking to keep such information confidential; (ii) direct or indirect persuasion or any attempt to persuade by any means, any employee of any Group Company to terminate his employment with any of those corporations or entities or to breach any of the terms of his employment with any Group Company; (iii) directly or indirectly making any statement that is, or could be, disparaging of Holdings or any Group Company, or any of their employees (except as necessary to respond truthfully to any inquiry from applicable regulatory authorities or to provide information pursuant to legal process); or (iv) directly or indirectly engaging in any activity that is, or could be, substantially injurious to the financial condition, reputation or goodwill of Holdings or any Group Company, in each case as determined in the sole discretion of an Appropriate Officer.

"Disability" means a disability, which meets the criteria under both the Long-Term Disability Insurance Plan and the United States Social Security Act.

"Discount Award Shares" means Shares equal in number to 25% of the Award Shares.

"Exchange Act" means the United States Securities Exchange Act of 1934, as later amended, modified, or substituted.

"Early Termination" means a Termination when (i) a Participant has at least 20 years of service or (ii) a Participant meets all of the following criteria: (x) the Participant's age plus years of service with Holdings or any subsidiary equals at least 65, (y) the Participant is at least 45 years old, and (z) the Participant has at least 10 years of service with Holdings or any subsidiary.

"Group" means Holdings and all its Subsidiaries and Affiliates, and

"Group Company" shall mean any entity within the Group.

"Person" has the same meaning as in section 13(d) or 14(d) of the Exchange Act.

"Plan" means the Lehman Brothers Holdings Inc. Employee Incentive Plan.

"Principal Award Shares" means Shares equal in number to 75% of the Award Shares.

"Retirement" means a Termination of employment with all Group Companies which meets the criteria for retirement under Holdings' qualified defined benefit pension plan, provided that the person has signed an agreement not to engage in Competitive Activity or Detrimental Activity, in a form prescribed in the sole discretion of an Appropriate Officer.

"Share" means a vested share of Common Stock of Holdings, par value of \$0.10 per share.

"Share Payment Date" means as soon as practicable after the earlier of (i) the Maturity Date or (ii) the end of the fiscal quarter immediately following the first anniversary of the Participant's termination of employment.

"Subsidiary" means any corporation or other Person of which a majority of its voting power or its voting equity securities or equity interest is owned directly or indirectly by Holdings.

"Termination" means the end of employment with Holdings or any Group Company. The date of Termination and the reason of Termination are as determined in the sole discretion of an Appropriate Officer.

"Voting Securities" means the outstanding Shares of capital stock of Holdings having ordinary voting power in the election of directors.

2. In this Letter, any reference to the singular shall include the plural and vice versa and any reference to the masculine gender shall include a reference to all other genders.

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EXHIBIT 11



2005 EQUITY AWARD PROGRAM

CONTINGENT STOCK AWARD LETTER

Pursuant to the Plan, Lehman Brothers Holdings Inc. ("Holdings") hereby grants to you (the "Participant"), as of November 30, 2005 (the "Date of Grant"), contingent rights to receive the number of Shares set forth on the award statement with your name delivered to you herewith (the "Award Shares")—which may be adjusted under section 7 of this Letter—subject to the terms of the Plan and to fulfillment of the conditions and contingencies set out in this letter (the "Letter").

This Letter will entitle the Participant to receive the Award Shares, under and on fulfillment of the contingencies and conditions specified herein. You have been provided with a copy of the Plan, which is incorporated in this Letter by reference and made a part hereof, and a copy of the Plan prospectus. The Plan and the prospectus should be carefully examined. In the event of any conflict or ambiguity between the Letter and the Plan, the terms of the Plan shall govern. All capitalized terms used herein and not defined in the Appendix to this Letter shall have the meaning ascribed to such terms under the Plan.

1. GRANT. The rights granted to the Participant under this Letter are a contingent entitlement to, and a right to receive, the Award Shares, and the Participant shall become entitled to receive the Award Shares on the Maturity Date, subject to fulfillment of the conditions set out in this Letter.

2. ENTITLEMENT TO RECEIVE COMMON STOCK.

(a) General Rule. Subject to other provisions of this section 2, the Participant shall become entitled to receive the Award Shares on the Maturity Date.

(b) Effect of Detrimental Activity. Notwithstanding any other provision of this Agreement, if the Participant engages in any Detrimental Activity at any time prior to the Share Payment Date, the Participant will not become entitled to any of the Award Shares and all rights hereunder shall terminate.

(c) Occurrence of Death, Disability. In the event of the occurrence of the Participant's death or Disability on or after January 31, 2006, all outstanding Award Shares held by the Participant shall

become immediately payable and the Participant (or, in the event of his death, his estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of his death) shall, on the 30th day thereafter, receive freely transferable shares of Common Stock.

(d) Effect of Termination. In the event of Termination of the Participant's employment with the Group for any reason or notification of Termination prior to January 31, 2006, the Participant will not become entitled to any of the Award Shares and all rights hereunder shall terminate. In the event of any Termination not described in the preceding sentence, the following rules shall apply:

(i) Voluntary Termination with Competitive Activity. In the event of the Participant's voluntary Termination with Competitive Activity:

- (i) The Participant will not become entitled to any Discount Award Shares on the Share Payment Date; and
- (ii) If such Termination occurs prior to November 30, 2007, the Participant will not become entitled to any Principal Award Shares on the Share Payment Date; and
- (iii) If such Termination occurs on or subsequent to November 30, 2007, the Participant shall become entitled, on the Share Payment Date, to the Principal Award Shares.

(ii) Voluntary Termination without Competitive Activity. In the event of the Participant's voluntary Termination without Competitive Activity:

- (i) The Participant shall, on the Share Payment Date, become entitled to receive all the Principal Award Shares; and
- (ii) The Participant shall on the Share Payment Date become entitled to 20% of the Discount Award Shares multiplied by each complete year of employment with the Group after November 30, 2005 and before Termination; and

LEHMAN BROTHERS

(iii) However, if such Termination is a Full Career Termination, the Participant shall on the Share Payment Date become entitled to the entire Discount Award Shares; and

(iv) If the Participant engages in Competitive Activity prior to the Share Payment Date, the provisions specified in Paragraph 2(d)(i) shall apply.

(iii) Involuntary Termination with Cause. In the event of the Participant's involuntary Termination with Cause at any time prior to the Maturity Date, the Participant shall not on that date become entitled to any Award Shares.

(iv) Involuntary Termination without Cause. In the event of the Participant's involuntary Termination without Cause:

(i) The Participant shall on the Share Payment Date become entitled to receive all the Principal Award Shares; and

(ii) The Participant shall on the Share Payment Date become entitled to 20% of the Discount Award Shares multiplied by each complete year of employment with the Group after November 30, 2005 and before Termination; and

(iii) However, if such Termination is a Full Career Termination, the Participant shall on the Share Payment Date become entitled to the entire Discount Award Shares.

(v) Retirement. Notwithstanding sections 2(d)(i), (ii), and (iv) of this Letter, in the event of the Participant's Retirement and provided the Participant does not engage in Competitive Activity or Detrimental Activity, the Participant shall immediately become entitled to receive all the Principal Award Shares and all the Discount Award Shares. The Participant will receive freely transferable shares of common stock for each Award Share he is entitled to receive, on the 30th day after his Retirement. In the event of a voluntary Termination, if the Participant engages in Competitive Activity prior to the Share Payment Date, the provisions specified in section 2(d)(i) of this Letter shall apply as of the date of his Retirement, and the Participant shall be entitled only to such Award Shares as provided therein or, if the Participant has already received Award Shares, the Participant shall be obligated to repay to Holdings the full gross amounts or Shares received in excess of those which the Participant would have received under section 2(d)(i). In any case, if the Participant engages in Detrimental Activity prior to the Share Payment Date, the Participant shall not be entitled to any Award Shares or, if the Participant has already received Award Shares, the Participant shall be obligated to repay to Holdings the full gross amounts or Shares the Participant received under this Letter.

(vi) Occurrence of Death or Disability following a Termination. Notwithstanding sections 2(d)(i), (ii), (iii) and (iv) of this Letter, in the event of the occurrence of the Participant's death or Disability following a Termination described in Paragraph 2(d)(ii) or (iv) above, the Participant (or, in the event of his death, his estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of his death) shall at that time immediately become entitled to receive any outstanding Principal Award Shares and Discount Award Shares.

Any shares that become payable pursuant to this Paragraph 2(d) (other than Paragraph 2(d)(v) or (vi)) shall be issued to you on the Share Payment Date, subject to the application of Paragraph 2(b). Any remaining Award Shares that are not payable pursuant to the provisions of the Paragraph 2(d) shall be canceled by Holdings.

3. AFFIDAVIT. In the event of the Termination of the Participant on or after January 31, 2006, the Participant may be requested, from time to time, after that Termination, to complete and sign an

affidavit with respect to Competitive Activity or Detrimental Activity, which includes representations and authorizes Holdings to verify the representations. Any failure on the part of the Participant to complete, sign and return the affidavit as required may prevent the Participant from becoming entitled to any of the Award Shares or in the event of Retirement, may cause the Participant to repay to Holdings the full gross amounts or Shares received under this Letter.

4. INTERIM PAYMENTS AND FURTHER AWARDS.

Holdings undertakes that provided, when dividends are declared and paid on any Shares on or after January 31, 2006, the Participant continues to be prospectively entitled to some or all of the Award Shares on fulfillment of the conditions or contingencies set out in section 2 of this Letter, it will, or it will procure that the Group Company employing the Participant award to the Participant additional Award Shares, with a value equal to such dividends paid on a corresponding number of Shares, net of any taxes applicable thereto as of the date of such dividend or distribution, subject to Paragraph 7. The Participant shall become entitled to any such additional Award Shares at the same time or times and on fulfillment of the same conditions and contingencies as those applicable to the original Award Shares to which those additional Award Shares relate.

5. TRANSFER OF SHARES AND LIMITATION ON

OBLIGATIONS. Subject to fulfillment of the conditions specified in section 2 of the Letter and receipt of any required taxes, Holdings or the Group Company employing the Participant shall transfer to the Participant the appropriate number of Shares and certificates therefor properly delivered on the date when such Shares are due to be delivered hereunder. The obligations of each and every Group Company shall be limited to the delivery to the Participant of Shares and in no way shall any Group Company become obligated to pay cash to the Participant, save as provided under section 4 or 8 of this Letter. If the date on which shares with respect to Award Shares are to be issued or delivered to the Participant falls on a non-business or non-trading day, such shares shall be delivered on the immediately succeeding trading day. Whenever shares with respect to Award Shares are required to be delivered on the 30th day following a specific triggering event, and such 30th day falls within the same tax year as the triggering event, the delivery may be made earlier, at the discretion of Holdings.

6. NON-ASSIGNMENT. No rights conferred by this Letter on the Participant shall be capable of being sold, transferred, assigned, pledged, hypothecated, or otherwise encumbered or disposed of, except by will or under the laws of descent and distribution. Any attempt to violate this section by the Participant or any other person claiming under or through him shall be null and void and without effect and neither Holdings nor any Group Company shall be or become obligated to issue or transfer Shares under this Letter.

7. EQUITABLE ADJUSTMENT. In the event of a Change in Capitalization occurring after the Date of Grant and before the Participant has become entitled to Shares under this Letter, the number and kind of Shares which may be issued to the Participant shall be adjusted so as to reflect that change.

8. CHANGE IN CONTROL. Except as set forth below, upon the occurrence of a Change in Control without the prior approval of a majority of the independent members of the Incumbent Board, the Participant shall become immediately entitled to all the Award Shares not already belonging to him, any sales restrictions shall lapse and Shares shall be issued. Except as set forth below, upon the occurrence of a Change in Control with the prior approval of a majority of the independent members of the Incumbent Board, the Participant shall receive in the same form of consideration as

that received by shareholders generally, the lesser of (a) the undiscounted market value (at the time of grant) of the shares of Common Stock underlying his outstanding Award Shares or (b) the price paid by an acquirer for such shares of Common Stock, and the excess, if any, of the price paid by an acquirer over such undiscounted market value shall be deferred for the shorter of (x) two years following such Change in Control or (y) the term of any remaining restrictions (the "Deferred Period"), and only if, in either case, the conditions and contingencies set out in section 2 of this Letter are satisfied at the end of the Deferred Period. Neither of the foregoing shall be effective to the extent that the Participant is able to direct the exercise of tender or voting rights in respect of Shares held in Trust, in which case the Participant will only be issued Shares or receive such undiscounted market value, in the same form of consideration as that received by shareholders generally (and after the Deferred Period, the excess price) in respect of such Shares upon successful completion of a Change in Control.

9. AMENDMENT. The terms of this Letter may be amended from time to time by the Committee in its sole discretion in any manner that it deems appropriate (including, but not limited to, acceleration of the entitlement of the Participant to Shares, or interim payments under section 4, of this Letter).

10. BINDING ACTIONS. Any action taken or decision made by the Committee or its designees arising out of or in connection with the construction, administration, interpretation or effect of this Letter or the Plan shall lie within its sole and absolute discretion, as the case may be, and shall be final, conclusive and binding on the Participant and all persons claiming under or through the Participant. By accepting this Letter or other benefit under the Plan, the Participant and each person claiming under or through the Participant shall be conclusively deemed to have confirmed acceptance and ratification of, and consent to, any action taken under the Plan or this Letter by the Committee or its designees.

11. NO RIGHT TO CONTINUED EMPLOYMENT. Neither the Letter nor the Plan nor any action taken or omitted to be taken hereunder or thereunder shall be deemed to create or confer upon the Participant any right to be retained in the employment of any Group Company, or to receive subsequent Contingent Stock Awards or other Awards under the Plan. The right of any Group Company to terminate the Participant's employment at any time, or as otherwise provided by any agreement between the Participant and any Group Company, is specifically reserved.

12. APPLICABLE LAW. The validity, construction, interpretation, administration, and effect of the Plan and of its rules and regulations and rights relating to the Plan, and of this Letter and rights arising under it, shall be governed by the substantive laws, but not the choice of law rules, of the State of Delaware, United States of America.

13. SUBMISSION TO JURISDICTION. The Participant, Holdings, and any Group Company employing the Participant agree that any issue concerning or relating to this Letter or to the acquisition or possible acquisition of Shares by the Participant hereunder shall be referred to the courts of the State of Delaware, United States of America, for determination.

14. STOCKHOLDER RIGHTS. The Participant and any transferee of this Letter following his death shall have no rights as a stockholder with respect to any Share covered by this Letter until he shall have become the holder of record of such Share.

15. TAXES/DEDUCTIONS. It shall be a condition of the obligation of any Group Company to issue or transfer Shares under this Letter that (a) the Participant (or, in the event of his death, his estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of his death) pay to the

Plan, either in the form of cash or freely transferable shares of Common Stock, such amount as is required to satisfy its obligation or the obligation of any other person to account for any taxes properly payable in respect of the Shares or any interim payments under section 4 of this Letter to which the Participant becomes entitled, and (b) the Participant (or, in the event of his death, his estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of his death) provide the relevant Group Company with any duly completed and executed forms, documents or other information reasonably required by the Group Company in respect of those Shares or interim payments. If the amount required for the payment of any such taxes is not paid, the Group Company may withhold the relevant Shares and/or related interim payments to fulfill all obligations in respect of such taxes. Any Group Company shall further have the right to deduct from all amounts remaining payable to the Participant after satisfaction of any taxes, the amount of any deficit, debt, tax obligation or other liability or obligation of any kind which the Participant may at that time have with respect to any Group Company.

16. CODE SECTION 409A. It is intended that none of the Award Shares or payments otherwise due hereunder shall be deferred, accelerated, extended, paid out or modified in a manner that would result in the imposition upon you of an additional tax under Section 409A of the Code; provided that neither Holdings nor any of its employees or representatives shall have any liability to you with respect to any such taxes. In the event that it is reasonably determined by the Committee that, as a result of Section 409A of the Code, payments hereunder may not be made at the time contemplated by the terms of this Agreement or the Plan, as the case may be, without causing you to be subject to taxation under Section 409A of the Code, Holdings will make such payment on the first day that would not result in your incurring any tax liability under Section 409A of the Code.

17. COMPLIANCE WITH LAW. Notwithstanding any of the provisions hereof, the Participant hereby agrees that the Group Company will not be obligated to issue or transfer any Shares to the Participant hereunder, if the issuance or transfer of such Shares shall constitute a violation by the Participant or any Group Company of any provisions of any law or regulation of any governmental authority applicable to the Letter. Any determination in this connection by Holdings shall be final, binding, and conclusive.

18. ENTIRE AGREEMENT. The Letter sets forth the entire agreement and understanding between the parties hereto and supersedes all prior agreements relating to the subject matter hereof.

APPENDIX

1. In the Letter, these terms shall have these meanings:

"Affiliate" means any corporation or other entity, which is not a subsidiary but as to which Holdings possesses a direct or indirect ownership interest and has representation on the board of directors or any similar governing body.

"Appropriate Officer" means the Chief Executive Officer or Chief Operating Officer of Holdings (or their respective designees).

"Board" means the board of directors of Holdings.

"Cause" means a material breach by a Participant of his employment contract with any one or more of the Group Companies, failure by the Participant to devote substantially all business time exclusively to the performance of his employment duties with a Group Company, willful misconduct, dishonesty relating to the business and affairs of any Group Company, conviction of a criminal offense being or equivalent to a felony or a misdemeanor constituting a statutory disqualification under United States securities laws (or failure to contest prosecution for a felony or such a misdemeanor), habitual or gross negligence in

the performance of the Participant's duties under his employment with a Group Company, solicitation of employees of a Group Company to work for any employer other than a Group Company, improper use or disclosure of confidential information relating to any Group Company, its business affairs or clients, the violation of policies and practices adopted by any Group Company or a material violation of the conflict of interest, proprietary information or business ethics policies of any Group Company, or such other circumstances as may be determined in the sole discretion of an Appropriate Officer.

"Change in Capitalization" means the occurrence of a circumstance described in Section 14 of the Plan.

"Committee" means the Compensation and Benefits Committee of the Incumbent Board (see definition of Change in Control in the Plan).

"Competitive Activity" means involvement (whether as an employee, proprietor, consultant or otherwise) with any person or entity (including any company and its affiliates) engaged in any business activity which is materially competitive with any business carried on by any Group Company on the date of termination of the Participant's employment with any of the Group Companies, as determined in the sole discretion of an Appropriate Officer.

"Detrimental Activity" means at any time (i) using confidential information received during employment with Holdings or any other Group Company relating to the business affairs of any Group Company, any of their affiliates, or any of their clients, in breach of such Participant's undertaking to keep such information confidential; (ii) direct or indirect persuasion or any attempt to persuade by any means, any employee of any Group Company to terminate his employment with any of those corporations or entities or to breach any of the terms of his employment with any Group Company; (iii) directly or indirectly making any statement that is, or could be disparaging of Holdings or any Group Company, or any of their employees (except as necessary to respond truthfully to any inquiry from applicable regulatory authorities or to provide information pursuant to legal process); or (iv) directly or indirectly engaging in any activity that is, or could be, substantially injurious to the financial condition, reputation or goodwill of Holdings or any Group Company, in each case as determined in the sole discretion of an Appropriate Officer.

"Disability" means a disability, which meets the criteria under both the Long-Term Disability Insurance Plan and the United States Social Security Act.

"Discount Award Shares" means Shares equal in number to 25% of the Award Shares.

"Exchange Act" means the United States Securities Exchange Act of 1934, as later amended, modified, or substituted.

"Full Career Termination" means a Termination when (i) a Participant has at least 20 years of service or (ii) a Participant meets all of the following criteria: (x) the Participant's age plus years of service with Holdings or any subsidiary equals at least 65, (y) the Participant is at least 45 years old, and (z) the Participant has at least 10 years of service with Holdings or any Group Company.

"Group" means Holdings and all its Subsidiaries and Affiliates, and

"Group Company" shall mean any entity within the Group.

"Maturity Date" means as soon as practicable after November 30, 2010 but no later than December 31, 2010.

"Person" has the same meaning as in section 13(d) or 14(d) of the Exchange Act.

"Plan" means the Lehman Brothers Holdings Inc. Employee Incentive Plan.

"Principal Award Shares" means Shares equal in number to 75% of the Award Shares.

"Retirement" means a Termination when the Participant's age plus years of service with any Group Company equals at least 65, provided that (i) the Participant is at least 65 years old and has at least 5 years of service or (ii) the Participant is at least 55 years old and has at least 10 years of service.

"Share" means a vested share of Common Stock of Holdings, par value of \$0.10 per share.

"Share Payment Date" means the earlier of (i) the Maturity Date or (ii) the 30th day after the end of the fiscal quarter immediately following the first anniversary of the Participant's termination of employment.

"Subsidiary" means any corporation or other Person of which a majority of its voting power or its voting equity securities or equity interest is owned directly or indirectly by Holdings.

"Termination" means the end of active employment with Holdings or any Group Company. The characterization of the circumstances of Termination is determined in the sole discretion of an Appropriate Officer.

"Voting Securities" means the outstanding Shares of capital stock of Holdings having ordinary voting power in the election of directors.

2. In this Letter, any reference to the singular shall include the plural and vice versa and any reference to the masculine gender shall include a reference to all other genders.

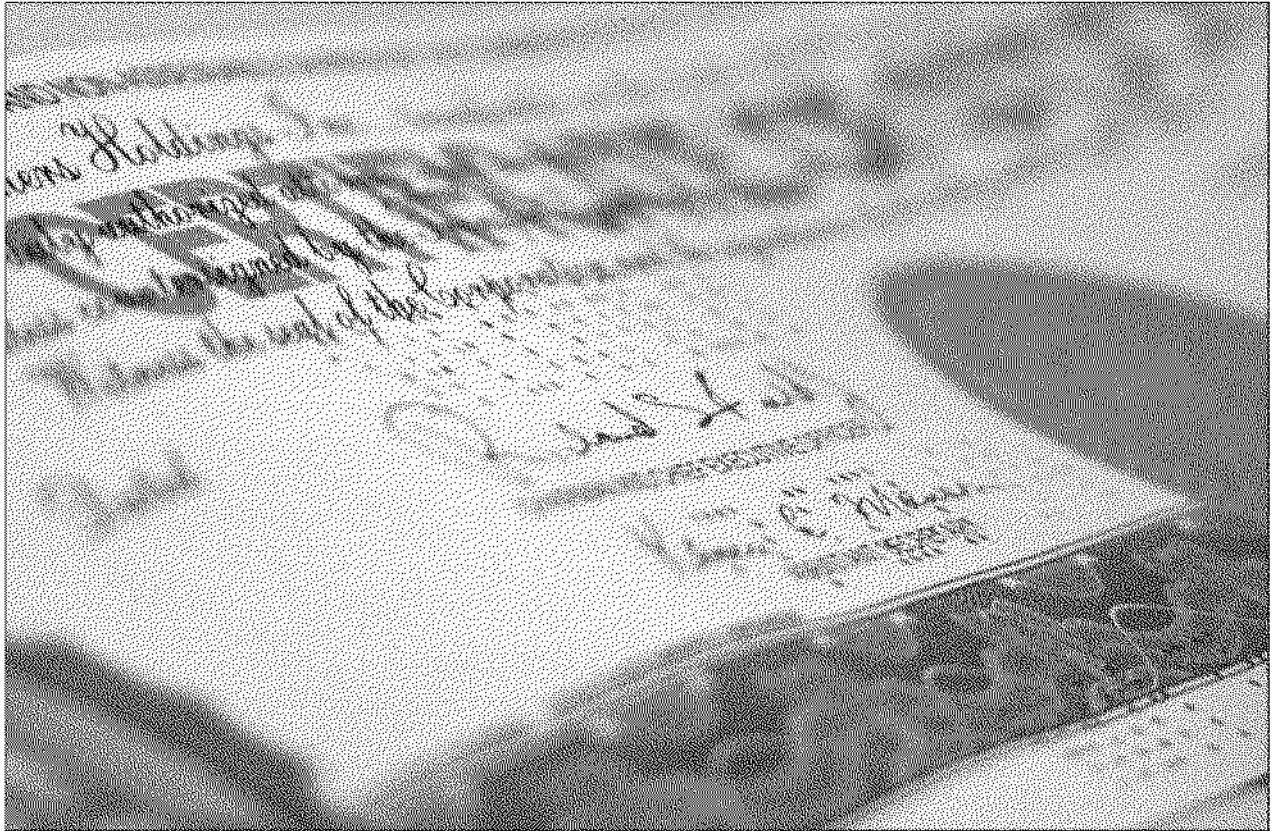
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EXHIBIT 12

2006 EQUITY AWARD PROGRAM

CONTINGENT STOCK AWARD LETTER



LEHMAN BROTHERS

Pursuant to the Lehman Brothers Holdings Inc. 2005 Stock Incentive Plan (the "Plan") Lehman Brothers Holdings Inc. ("Holdings") hereby grants to you (the "Participant"), as of December 8, 2006 (the "Date of Grant"), contingent rights to receive the number of Shares set forth on the award statement with your name delivered to you herewith (the "2006 Award Shares")—which may be adjusted under section 7 of this Letter—subject to the terms of the Plan and to fulfillment of the conditions and contingencies set out in this letter (the "Letter"). A portion of the Participant's 2006 Award Shares are classified either as "Principal Award Shares" or "Discount Award Shares" as defined in the glossary attached hereto.

If the Participant is classified by Holdings or any applicable Group Company as a "production based employee" for the Company's 2006 fiscal year ended November 30, 2006 ("Production-Based Employee"), in the event of the Participant's Termination prior to November 30, 2006, the number of 2006 Award Shares the Participant was awarded was based on the appropriate portion of such Participant's production-based compensation accrued for such Participant's 2006 equity award through the date of the Participant's Termination, in accordance with Holdings' standard formula for the payout of equity-based compensation for employees at the Participant's level.

This Letter will entitle the Participant to receive the 2006 Award Shares, under and on fulfillment of the contingencies and conditions specified herein. You have been provided with a copy of the Plan, which is incorporated in this Letter by reference and made a part hereof, and a copy of the Plan prospectus. The Plan and the prospectus should be carefully examined. In the event of any conflict or ambiguity between the Letter and the Plan, the terms of the Plan shall govern. All capitalized terms used herein and not defined in the Appendix to this Letter shall have the meaning ascribed to such terms under the Plan.

1. GRANT. The rights granted to the Participant under this Letter are a contingent entitlement to, and a right to receive, the 2006 Award Shares and the Participant shall become entitled to receive the 2006 Award Shares and Shares related thereto on the Share Payment Date, subject to fulfillment of the conditions set out in this Letter. Some of the conditions set out in this Letter, such as those provided in paragraph 2(b) apply through the Share Payment Date or such other date on which the vesting of unconditional 2006 Award Shares and delivery of Shares in respect thereof is otherwise called for hereunder. In contrast to such "full conditions," other "limited" conditions, such as Paragraph 2(d) apply only over the time periods and under the circumstances provided as described in those conditions.

2. ENTITLEMENT TO RECEIVE COMMON STOCK.

(a) General Rule. Subject to other provisions of this section 2, 6, 8, 15 and 16, the Participant shall become entitled to receive vested 2006 Award Shares on the Share Payment Date. Unless otherwise set forth herein, the Participant shall receive one share of Common Stock for each 2006 Award Share which the Participant holds on November 30, 2011 (the "Share Payment Date") and which has not otherwise been terminated pursuant to the terms and conditions hereof. In such case, the Participant shall be entitled to receive freely transferable Shares of Common Stock as soon as practicable after the Share Payment Date, but no later than December 31, 2011.

- (b) Effect of Detrimental Activity.** Notwithstanding any other provision of this Agreement, if the Participant engages in any Detrimental Activity at any time prior to the Share Payment Date, the Participant will not become entitled to any of the 2006 Award Shares and all rights hereunder shall terminate.
- (c) Occurrence of Death, Disability While Participant is Employed.** In the event of the occurrence of the Participant's death or Disability all outstanding 2006 Award Shares held by the Participant shall become vested and Shares relating thereto shall become immediately payable and the Participant (or, in the event of his death, his estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of his death) shall, on the 30th day thereafter, receive freely transferable shares of Common Stock provided, however, if Participant is not classified as a Production Based Employee, the foregoing shall only apply if the Participant's death or Disability occurs on or after January 31, 2007.
- (d) Effect of Termination.** Except if the Participant is a Production-Based Employee and except as prescribed in paragraph 8 hereof, in the event of Termination of the Participant's employment with Holdings or any Group Company for any reason or notification of Termination prior to January 31, 2007, the Participant will not become entitled to any of the 2006 Award Shares and all rights hereunder shall terminate. Except as otherwise provided in this Paragraph 2(d) and Paragraph 8, the rights granted to a Participant hereunder to receive unconditional 2006 Award Shares is conditioned not only on "full conditions" such as Paragraphs 2(b), 9 and 15, without limitation, but also on the Participant remaining actively employed through the date (or dates) applicable to such Participant as described under "Service Requirements" in the glossary. In the event of any Termination not described in the first sentence of this Paragraph 2(d) (including without limitation, if the Participant is a Production Based Employee), the following rules shall apply:
 - (i) Voluntary Termination.** Except as otherwise provided for in Paragraph 2(d)(iv) and 2(d)(v) hereof, and subject to Paragraph 8 hereof, in the event of a Participant's voluntary Termination all then outstanding 2006 Award Shares as to which the applicable Services Requirements as described in the glossary had not been met as of the date of such Termination shall be terminated, forfeited and be cancelled, and the Participant shall have no further right to any shares of Common Stock relating thereto. All other terms and conditions of this Agreement and the Plan shall continue to apply to any 2006 Award Shares not so terminated.
 - (ii) Involuntary Termination with Cause.** In the event of the Participant's involuntary Termination with Cause at any time prior to the Share Payment Date, the 2006 Award Shares shall be terminated, forfeited and cancelled and the Participant shall not on that date become entitled to any 2006 Award Shares or any shares of Common Stock relating thereto.
 - (iii) Involuntary Termination without Cause.** Except as provided in Paragraphs 2(c), 2(d)(iv) 2(d)(v), and 8, and subject to the "full conditions" of Paragraphs 2(b), 6, 15 and 16, in the event of a Participant's involuntary Termination without Cause, the Participant shall be entitled to receive 2006 Principal Award

Shares and freely transferable shares of Common Stock with respect thereto as soon as practicable after the Share Payment Date, but no later than December 31, 2011, provided, however, that your entitlement to any freely transferable shares of Common Stock underlying such outstanding 2006 Principal Award Shares as to which the applicable Service Requirements have not been met is expressly conditioned on your timely execution of a release in such form as may be required by Holdings or any Group Company and in accordance with Holdings' (or any Group Company's) policies and procedures then in effect, but all then outstanding 2006 Discount Award Shares shall be terminated, forfeited and be cancelled, and the Participant shall have no further right to any shares of Common Stock relating thereto.

(iv) Full Career Termination. Notwithstanding the foregoing provisions of Paragraphs 2(d)(i) and (iii), but without limiting the application of the "full conditions" of Paragraphs 2(b), 2(d)(ii), 6, 8, 15 and 16, in the event of a Participant's voluntary Termination which occurs at a time when the Participant satisfies the definition of Full Career Termination, no further Service Requirements shall need to be satisfied by the Participant in respect of all of such Participant's then outstanding 2006 Award Shares and shares of Common Stock relating thereto shall be delivered as soon as practicable after the Share Payment Date, but no later than December 31, 2011, subject to satisfaction of such other "full conditions". An express condition of no longer requiring that the Participant satisfy the Service Requirements with respect to such 2006 Award Shares and an express condition to the shares of Common Stock underlying such 2006 Award Shares becoming deliverable pursuant to the immediately preceding sentence is that the Participant not engage in Competitive Activity through and including the end of the Company's fiscal quarter following the one year anniversary of such Termination. Notwithstanding the foregoing provisions of Paragraphs 2(d)(i) and (iii), but without limiting the application of Paragraphs 2(b), 2(d)(ii), 4(d)(v), 6, 8, 15 and 16, in the event the Participant's involuntary Termination without Cause occurs at a time when the Participant satisfies the definition of Full Career Termination, no further Service Requirement shall be required of the Participant with respect to all then outstanding 2006 Award Shares and, subject to the "full conditions" described herein, such 2006 Award Shares shall vest and shares of Common Stock relating thereto shall be delivered as soon as practicable after the Share Payment Date, but no later than December 31, 2011.

(v) Occurrence of Death or Disability following a Termination. Without limiting the applicability of Paragraphs 2(b), 6, 8, 15 and 16 hereof and notwithstanding sections 2(d)(i), (iii) and (iv) of this Letter, in the event of the occurrence of the Participant's death or Disability following a Termination described in Paragraph 2(d)(i) or (iii) above, the Participant (or, in the event of his death, his estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of his death) shall at that time immediately become entitled to receive any outstanding Principal Award Shares and Discount Award Shares.

Any shares of Common Stock that become deliverable pursuant to this Paragraph 2(d) (other than Paragraph 2(d)(v)) shall be delivered to the Participant as soon as practicable after the Share Payment Date, but no later than December 31, 2011, subject to the application of

Paragraphs 2(b), 8, 15 and 16. Any remaining 2006 Award Shares that are not deliverable pursuant to the provisions of Paragraph 2 or otherwise under this Agreement or the Plan shall be terminated, forfeited and be cancelled by Holdings, and the Participant shall have no further right to any shares of Common Stock relating thereto.

For purposes of this Agreement, Holdings and/or the Committee, as applicable, shall determine in its sole discretion whether or not the Participant's Termination is voluntary, involuntary, or with or without Cause, whether or not the Participant has engaged in Detrimental Activity, or whether or not the Participant meets the definition of Disability or Full Career Termination.

4. INTERIM PAYMENTS AND FURTHER AWARDS.

Holdings undertakes that provided, when dividends are declared and paid on any Shares on or after the Date of Grant, the Participant continues to be prospectively entitled to some or all of the Award Shares on fulfillment of the conditions or contingencies set out in section 2 of this Letter, it will, or it will procure that the Group Company employing the Participant award to the Participant additional Award Shares, with a value equal to such dividends paid on a corresponding number of Shares, net of any taxes applicable thereto as of the date of such dividend or distribution, subject to Paragraph 7. The Participant shall become entitled to any such additional Award Shares at the same time or times and on fulfillment of the same conditions and contingencies as those applicable to the original Award Shares to which those additional Award Shares relate, provided however, in the event the Participant is not classified as a Production Based Employee, no such additional 2006 Award Shares shall be granted to the Participant in respect of any such dividend or distribution paid or made on Common Stock to holders of record on any date prior to January 31, 2007.

5. TRANSFER OF SHARES AND LIMITATION ON

OBLIGATIONS. Subject to fulfillment of the conditions specified in section 2 of the Letter and receipt of any required taxes, Holdings or the Group Company employing the Participant shall transfer to the Participant the appropriate number of Shares and certificates therefor properly delivered on the date when such Shares are due to be delivered hereunder. The obligations of each and every Group Company shall be limited to the delivery to the Participant of Shares and in no way shall any Group Company become obligated to pay cash to the Participant, save as provided under section 4 or 8 of this Letter. If the date on which shares with respect to Award Shares are to be issued or delivered to the Participant falls on a non-business or non-trading day, such shares shall be delivered on the immediately succeeding trading day. Whenever shares with respect to Award Shares are required to be delivered on the 30th day following a specific triggering event, and such 30th day falls within the same tax year as the triggering event, the delivery may be made earlier, at the discretion of Holdings.

6. NON-ASSIGNMENT. No rights conferred by this Letter on the Participant shall be capable of being sold, transferred, assigned, pledged, hypothecated, or otherwise encumbered or disposed of, except by will or under the laws of descent and distribution. Any attempt to violate this section by the Participant or any other person claiming under or through him shall be null and void and without effect and neither Holdings nor any Group Company shall be or become obligated to issue or transfer Shares under this Letter.

7. EQUITABLE ADJUSTMENT. In the event of a Change in Capitalization occurring after the Date of Grant and before the Participant has become entitled to Shares under this Letter, the number and kind of Shares which may be issued to the Participant shall be adjusted so as to reflect that change.

8. CHANGE IN CONTROL. Except as set forth below, upon the occurrence of a Change in Control without the prior approval of a majority of the independent members of the Incumbent Board, the Participant shall become immediately entitled to all the Award Shares not already belonging to him, any sales restrictions shall lapse and Shares shall be delivered. Except as set forth below, upon the occurrence of a Change in Control with the prior approval of a majority of the independent members of the Incumbent Board, the Participant shall receive in the same form of consideration as that received by shareholders generally, the lesser of (a) the "undiscounted market value" (at the time of grant) of the shares of Common Stock underlying his outstanding 2006 Award Shares (i.e. the fair market value of the Participant's 2006 Award Shares determined on the Date of Grant) or (b) the price paid by an acquirer for such shares of Common Stock, and the excess, if any, of the price paid by an acquirer over such undiscounted market value shall be deferred for the shorter of (x) two years following such Change in Control or (y) the term of any remaining restrictions (the "Deferred Period"), and only if, in either case, the conditions and contingencies set out in section 2 of this Letter are satisfied at the end of the Deferred Period. Neither of the foregoing shall be effective to the extent that the Participant is able to direct the exercise of tender or voting rights in respect of Shares held in Trust, in which case the Participant will only be delivered Shares or receive such undiscounted market value, in the same form of consideration as that received by shareholders generally (and after the Deferred Period, the excess price) in respect of such Shares upon successful completion of a Change in Control.

9. AMENDMENT. The terms of this Letter may be amended from time to time by the Committee in its sole discretion in any manner that it deems appropriate (including, but not limited to, acceleration of the entitlement of the Participant to Shares, or interim payments under section 4, of this Letter), including, without limitation, in order to satisfy applicable requirements of Sections 162(m) and Section 409A of the Code, as amended from time to time, (whether or not the Participant's rights are adversely affected).

10. BINDING ACTIONS. Any action taken or decision made by the Committee or its designees arising out of or in connection with the construction, administration, interpretation or effect of this Letter or the Plan shall lie within its sole and absolute discretion, as the case may be, and shall be final, conclusive and binding on the Participant and all persons claiming under or through the Participant. By accepting this Letter or other benefit under the Plan, the Participant and each person claiming under or through the Participant shall be conclusively deemed to have confirmed acceptance and ratification of, and consent to, any action taken under the Plan or this Letter by the Committee or its designees.

11. NO RIGHT TO CONTINUED EMPLOYMENT. Neither the Letter nor the Plan nor any action taken or omitted to be taken hereunder or thereunder shall be deemed to create or confer upon the Participant any right to be retained in the employment of any Group Company, or to receive subsequent Contingent Stock Awards or other

Awards under the Plan. The right of any Group Company to terminate the Participant's employment at any time, or as otherwise provided by any agreement between the Participant and any Group Company, is specifically reserved.

12. APPLICABLE LAW. The validity, construction, interpretation, administration, and effect of the Plan and of its rules and regulations and rights relating to the Plan, and of this Letter and rights arising under it, shall be governed by the substantive laws, but not the choice of law rules, of the State of Delaware, United States of America.

13. SUBMISSION TO JURISDICTION. The Participant, Holdings, and any Group Company employing the Participant agree that any issue concerning or relating to this Letter or to the acquisition or possible acquisition of Shares by the Participant hereunder shall be referred to the courts of the State of Delaware, United States of America, for determination.

14. STOCKHOLDER RIGHTS. The Participant and any transferee of this Letter following his death shall have no rights as a stockholder with respect to any Share covered by this Letter until he shall have become the holder of record of such Share.

15. TAXES/DEDUCTIONS. It shall be a condition of the obligation of any Group Company to issue or transfer Shares under this Letter that (a) the Participant (or, in the event of his death, his estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of his death) pay to the relevant Group Company, on its demand, in accordance with the Plan, either in the form of cash or freely transferable shares of Common Stock, such amount as is required to satisfy its obligation or the obligation of any other person to account for any taxes properly payable in respect of the Shares or any interim payments under section 4 of this Letter to which the Participant becomes entitled, and (b) the Participant (or, in the event of his death, his estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of his death) provide the relevant Group Company with any duly completed and executed forms, documents or other information reasonably required by the Group Company in respect of those Shares or interim payments. If the amount required for the payment of any such taxes is not paid, the Group Company may withhold the relevant Shares and/or related interim payments to fulfill all obligations in respect of such taxes. Any Group Company shall further have the right to deduct from all amounts remaining payable to the Participant after satisfaction of any taxes, the amount of any deficit, debt, tax obligation or other liability or obligation of any kind which the Participant may at that time have with respect to any Group Company.

16. CODE SECTION 409A. It is intended that none of the Award Shares or payments otherwise due hereunder shall be deferred, accelerated, extended, paid out or modified in a manner that would result in the imposition upon the Participant of an additional tax under Section 409A of the Code; provided that neither Holdings nor any of its employees or representatives shall have any liability to the Participant with respect to any such taxes. In the event that it is reasonably determined by the Committee that, as a result of Section 409A of the Code, payments hereunder may not be made at the time contemplated by the terms of this Agreement or the Plan, as the case may be, without causing the Participant to be subject to taxation under Section 409A of the Code, Holdings will make such payment on the first day that would not result in the Participant's incurring any tax liability under

Section 409A of the Code.

17. COMPLIANCE WITH LAW. Notwithstanding any of the provisions hereof, the Participant hereby agrees that the Group Company will not be obligated to issue or transfer any Shares to the Participant hereunder, if the issuance or transfer of such Shares shall constitute a violation by the Participant or any Group Company of any provisions of any law or regulation of any governmental authority applicable to the Letter. Any determination in this connection by Holdings shall be final, binding, and conclusive.

18. ENTIRE AGREEMENT. The Letter sets forth the entire agreement and understanding between the parties hereto and supersedes all prior agreements relating to the subject matter hereof.

APPENDIX

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"Affiliate" means any corporation or other entity, which is not a subsidiary but as to which Holdings possesses a direct or indirect ownership interest and has representation on the board of directors or any similar governing body.

"Appropriate Officer" means the Chief Executive Officer or Chief Operating Officer of Holdings (or their respective designees).

"Board" means the board of directors of Holdings.

"Cause" means a material breach by a Participant of his employment contract with any one or more of the Group Companies, failure by the Participant to devote substantially all business time exclusively to the performance of his employment duties with a Group Company, willful misconduct, dishonesty relating to the business and affairs of any Group Company, conviction of a criminal offense being or equivalent to a felony or a misdemeanor constituting a statutory disqualification under United States securities laws (or failure to contest prosecution for a felony or such a misdemeanor), habitual or gross negligence in the performance of the Participant's duties under his employment with a Group Company, solicitation of employees of a Group Company to work for any employer other than a Group Company, improper use or disclosure of confidential information relating to any Group Company, its business affairs or clients, the violation of policies and practices adopted by any Group Company or a material violation of the conflict of interest, proprietary information or business ethics policies of any Group Company, or such other circumstances as may be determined in the sole discretion of an Appropriate Officer. For avoidance of doubt, for purposes of the preceding sentence, a material breach of an employment contract or violation of policies would include, as applicable, the employee's violation of any policy or employment agreement relating to the obligation to provide advance notice of resignation from Holdings or any Group Company.

"Change in Capitalization" means the occurrence of a circumstance described in Section 14 of the Plan.

"Committee" means the Compensation and Benefits Committee of the Incumbent Board (see definition of Change in Control in the Plan).

"Competitive Activity" means involvement (whether as an employee, proprietor, consultant or otherwise) with any person or entity (including any company and its affiliates) engaged in any business activity which is materially competitive with any business carried on by any Group

Company on the date of termination of the Participant's employment with any of the Group Companies, as determined in the sole discretion of an Appropriate Officer.

"Detrimental Activity" means at any time (i) using confidential information received during employment with Holdings or any other Group Company relating to the business affairs of any Group Company, any of their affiliates, or any of their clients, in breach of such Participant's undertaking to keep such information confidential; (ii) direct or indirect persuasion or any attempt to persuade by any means, any employee of any Group Company to terminate his employment with any of those corporations or entities or to breach any of the terms of his employment with any Group Company; (iii) directly or indirectly making any statement that is, or could be disparaging of Holdings or any Group Company, or any of their employees (except as necessary to respond truthfully to any inquiry from applicable regulatory authorities or to provide information pursuant to legal process); or (iv) directly or indirectly engaging in any activity that is, or could be, substantially injurious to the financial condition, reputation or goodwill of Holdings or any Group Company, in each case as determined in the sole discretion of an Appropriate Officer.

"Disability" means a disability, which meets the criteria under both the Long-Term Disability Insurance Plan and the United States Social Security Act.

"Discount Award Shares" means the number of 2006 Award Shares (and any dividend equivalents related thereto. If Participant was a Managing Director of Holdings or any Group Company for the fiscal year ended November 30, 2006, thirty percent (30%) of Participant's 2006 Award Shares as of the date of grant will be Discount Award Shares. If Participant is an employee other than a Managing Director of Holdings or any Group Company for the fiscal year ended November 30, 2006, twenty-five percent (25%) of Participant's 2006 Award Shares as of the date of grant will be Discount Award Shares.

"Exchange Act" means the United States Securities Exchange Act of 1934, as later amended, modified, or substituted.

"Full Career Termination" means a Termination when (i) a person has at least 20 years of service, (ii) the person is at least 45 years old, and the person has at least 10 years of service; or (iii) a person meets all of the following criteria: (a) the person is at least 50 years old, and (b) the person has at least 5 years of service.

"Group" means Holdings and all its Subsidiaries and Affiliates, and

"Group Company" shall mean any entity within the Group. Holdings and/or the Committee, as applicable, shall determine in its sole discretion whether or not an entity is or is not a "Group Company" for purposes of any provision of this Agreement.

"Person" has the same meaning as in section 13(d) or 14(d) of the Exchange Act.

"Plan" means the Lehman Brothers Holdings Inc. 2005 Stock Incentive Plan.

"Service Requirements" means the schedule below that is applicable to the Participant, pursuant to which the Participant is required to be actively employed with the Company and/or any Group Company as described in Paragraph 2, and which, except as provided in Paragraphs 2(c), 2(d)(i), (iii), (iv) and (v) and 8, shall be a necessary

condition for the Participant to become entitled to receive both vested 2006 Award Shares and shares of Common Stock underlying such 2006 Award Shares provided the Participant otherwise satisfies the other terms and conditions hereunder:

(a) If the Participant was a Managing Director of Holdings or any Group Company for the fiscal year ended November 30, 2006, such Participant is required to remain actively employed with the Company and/or any Group Company through the date specified below in order to be eligible to receive that portion of such 2006 Award Shares (and the Shares in respect thereof) specified next to such date, subject in all cases, to the other terms and conditions herein:

Principal Award Shares: 50%: November 30, 2009;
50%: November 30, 2011.

Discount Award Shares: 100%: November 30, 2011.

(b) If Participant was an employee of Holdings or any Group Company other than a Managing Director for the fiscal year ended November 30, 2006 such Participant is required to remain actively employed with the Company and/or any Group Company through the date specified in order to be eligible to receive that portion of such 2006 Award Shares (and the Shares in respect thereof) specified next to such date, subject in all cases, to the other terms and conditions herein:

Principal Award Shares: 100%: November 30, 2008
Discount Award Shares: 100%: November 30, 2011.

"Principal Award Shares" shall mean the number of 2006 Award Shares (and any dividend equivalents related thereto) related to the undiscounted base portion of the award. If the Participant was a Managing Director of Holdings or any Group Company for the fiscal year ended November 30, 2006, seventy percent (70%) of such Participant's 2006 Award Shares as of the Date of Grant will be Principal Award Shares. If Participant is an employee other than a Managing Director of Holdings or any Group Company for the fiscal year ended November 30, 2006, seventy-five percent (75%) of such Participant's 2006 Award Shares as of the Date of Grant will be Principal Award Shares.

"Share" means a share of Common Stock of Holdings, par value of \$0.10 per share.

"Share Payment Date" means November 30, 2011.

"Subsidiary" means any corporation or other Person of which a majority of its voting power or its voting equity securities or equity interest is owned directly or indirectly by Holdings.

"Termination" means the end of active employment with Holdings or any Group Company. The characterization of the circumstances of Termination is determined in the sole discretion of an Appropriate Officer.

"Voting Securities" means the outstanding Shares of capital stock of Holdings having ordinary voting power in the election of directors.

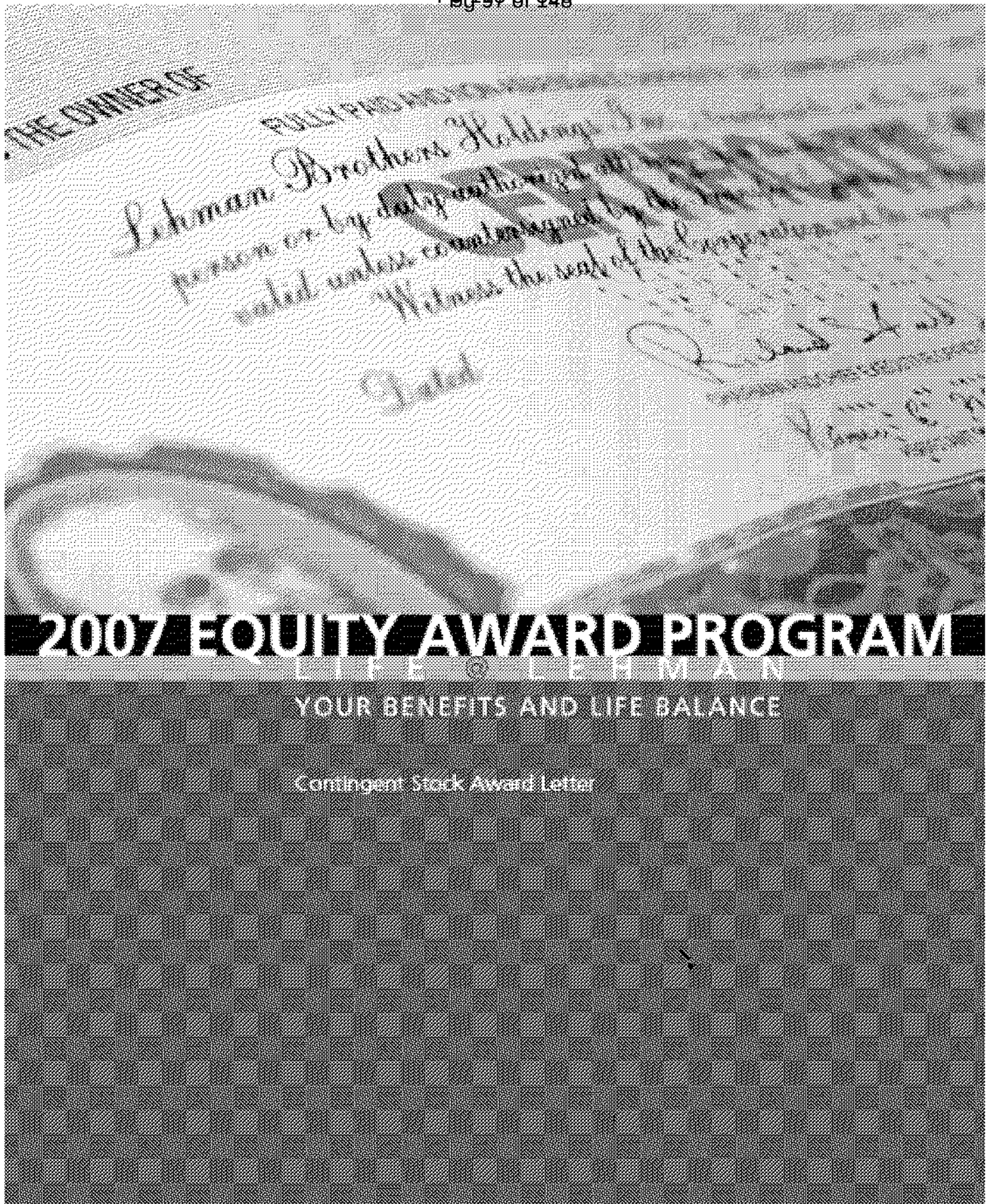
2. In this Letter, any reference to the singular shall include the plural and vice versa and any reference to the masculine gender shall include a reference to all other genders.

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EXHIBIT 13



LEHMAN BROTHERS

Pursuant to the Lehman Brothers Holdings Inc. ("Holdings") 2005 Stock Incentive Plan (the "Plan"), Holdings hereby grants to you (the "Participant"), as of December 7, 2007 (the "Date of Grant"), contingent rights to receive the number of Shares set forth on the award statement with your name delivered to you herewith (the "2007 Award Shares")—which may be adjusted under section 7 of this Letter—subject to the terms of the Plan and to fulfillment of the conditions and contingencies set out in this letter (the "Letter"). A portion of the Participant's 2007 Award Shares are classified either as "Principal Award Shares" or "Discount Award Shares" as defined in the glossary attached hereto.

If the Participant is classified by Holdings or any applicable Group Company as a "production-based employee" for the Company's 2007 fiscal year ended November 30, 2007 ("Production-Based Employee"), in the event of the Participant's Termination prior to November 30, 2007, the number of 2007 Award Shares the Participant was awarded was based on the appropriate portion of such Participant's production-based compensation accrued for such Participant's 2007 equity award through the date of the Participant's Termination, in accordance with Holdings' standard formula for the payout of equity-based compensation for employees at the Participant's level.

This Letter will entitle the Participant to receive the 2007 Award Shares, under and on fulfillment of the contingencies and conditions specified herein. You have been provided with a copy of the Plan, which is incorporated in this Letter by reference and made a part hereof, and a copy of the Plan prospectus. The Plan and the prospectus should be carefully examined. In the event of any conflict or ambiguity between the Letter and the Plan, the terms of the Plan shall govern. All capitalized terms used herein and not defined in the Appendix to this Letter shall have the meaning ascribed to such terms under the Plan.

1. GRANT. The rights granted to the Participant under this Letter are a contingent entitlement to, and a right to receive, the 2007 Award Shares and the Participant shall become entitled to receive the 2007 Award Shares and Shares related thereto on the Share Payment Date, subject to fulfillment of the conditions set out in this Letter. Some of the conditions set out in this Letter, such as those provided in paragraph 2(b) apply through the Share Payment Date or such other date on which the 2007 Award Shares become unconditional and delivery of Shares in respect thereof is otherwise called for hereunder. In contrast to such "limited conditions," other "full" conditions, such as Paragraph 2(d) apply only over the time periods and under the circumstances provided as described in those conditions.

2. ENTITLEMENT TO RECEIVE COMMON STOCK.

(a) General Rule. Subject to other provisions of this section 2, 6, 8, 15 and 16, the Participant shall become entitled to receive 2007 Award Shares on the Share Payment Date. Unless otherwise set forth herein, the Participant shall receive one Share for each 2007 Award Share which the Participant holds on November 30, 2012 (the "Share Payment Date") and which has not otherwise been terminated pursuant to the terms and conditions hereof. In such case, the Participant shall be entitled to receive freely transferable Shares as soon as practicable after the Share Payment Date, but no later than December 31, 2012.

- (b) Effect of Detrimental Activity.** Notwithstanding any other provision of this Agreement, if the Participant engages in any Detrimental Activity at any time prior to the Share Payment Date, the Participant will not become entitled to any of the 2007 Award Shares and all rights hereunder shall terminate.
- (c) Occurrence of Death, Disability While Participant is Employed.** In the event of the occurrence of the Participant's death or Disability all outstanding 2007 Award Shares held by the Participant shall become unconditional and Shares relating thereto shall become immediately payable and the Participant (or, in the event of his death, his estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of his death) shall, on the 30th day thereafter, receive freely transferable Shares.
- (d) Effect of Termination.** Except as otherwise provided in this Paragraph 2(d) and Paragraph 8, the rights granted to a Participant hereunder to receive 2007 Award Shares is conditioned not only on "limited conditions" such as Paragraphs 2(b), 9 and 15, without limitation, but also on the Participant remaining actively employed through the date (or dates) applicable to such Participant as described under "Service Requirements" in the glossary. In the event of any Termination the following rules shall apply:
- (i) Voluntary Termination.** Except as otherwise provided for in Paragraph 2(d)(iv) and 2(d)(v) hereof, and subject to Paragraph 8 hereof, in the event of a Participant's voluntary Termination all then outstanding 2007 Award Shares as to which the applicable Services Requirements as described in the glossary had not been met as of the date of such Termination shall be terminated, forfeited and be cancelled, and the Participant shall have no further right to any Shares relating thereto. All other terms and conditions of this Agreement and the Plan shall continue to apply to any 2007 Award Shares not so terminated.
- (ii) Involuntary Termination with Cause.** In the event of the Participant's involuntary Termination with Cause at any time prior to the Share Payment Date, the 2007 Award Shares shall be terminated, forfeited and cancelled and the Participant shall not on that date become entitled to any 2007 Award Shares or any Shares relating thereto.
- (iii) Involuntary Termination without Cause.** Except as provided in Paragraphs 2(c), 2(d)(iv) 2(d)(v), and 8, and subject to the "limited conditions" of Paragraphs 2(b), 3, 6, 15 and 16, in the event of a Participant's involuntary Termination without Cause, the Participant shall be entitled to receive 2007 Principal Award Shares and freely transferable Shares with respect thereto as soon as practicable after the Share Payment Date, but no later than December 31, 2012, provided, however, that the Participant's entitlement to any freely transferable Shares underlying such outstanding 2007 Principal Award Shares as to which the applicable Service Requirements have not been met is expressly conditioned on the Participant's timely execution of a release in such form as may be required by Holdings or any Group Company and in accordance with Holdings' (or any Group Company's) policies and procedures then in effect. All then outstanding 2007 Discount Award Shares shall be terminated,

forfeited and be cancelled, and the Participant shall have no further right to any Shares relating thereto.

(iv) Full Career Termination. Notwithstanding the foregoing provisions of Paragraphs 2(d)(i) and (iii), but without limiting the application of the "limited conditions" of Paragraphs 2(b), 2(d)(ii), 3, 6, 8, 15 and 16, in the event of a Participant's voluntary Termination which occurs at a time when the Participant satisfies the definition of Full Career Termination, no further Service Requirements shall need to be satisfied by the Participant in respect of all of such Participant's then outstanding 2007 Award Shares and Shares relating thereto shall be delivered as soon as practicable after the Share Payment Date, but no later than December 31, 2012, subject to satisfaction of such other "limited conditions". An express condition of no longer requiring that the Participant satisfy the Service Requirements with respect to such 2007 Award Shares and an express condition to the Shares underlying such 2007 Award Shares becoming deliverable pursuant to the immediately preceding sentence is that the Participant not engage in Competitive Activity through and including the end of the Company's fiscal quarter following the one year anniversary of such Termination. Notwithstanding the foregoing provisions of Paragraphs 2(d)(i) and (iii), but without limiting the application of Paragraphs 2(b), 2(d)(ii), 3, 4(d)(v), 6, 8, 15 and 16, in the event the Participant's involuntary Termination without Cause occurs at a time when the Participant satisfies the definition of Full Career Termination, no further Service Requirement shall be required of the Participant with respect to all then outstanding 2007 Award Shares and, subject to the "limited conditions" described herein, Shares relating thereto shall be delivered as soon as practicable after the Share Payment Date, but no later than December 31, 2012.

(v) Occurrence of Death or Disability following a Termination. Without limiting the applicability of Paragraphs 2(b), 3, 6, 8, 15 and 16 hereof and notwithstanding sections 2(d)(i), (iii) and (iv) of this Letter, in the event of the occurrence of the Participant's death or Disability following a Termination described in Paragraph 2(d)(i) or (iii) above, the Participant (or, in the event of his death, his estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of his death) shall at that time immediately become entitled to receive any outstanding Principal Award Shares and Discount Award Shares.

Any Shares that become deliverable pursuant to this Paragraph 2(d) (other than Paragraph 2(d)(v)) shall be delivered to the Participant as soon as practicable after the Share Payment Date, but no later than December 31, 2012, subject to the application of Paragraphs 2(b), 3, 6, 8, 15 and 16. Any remaining 2007 Award Shares that are not deliverable pursuant to the provisions of Paragraph 2 or otherwise under this Agreement or the Plan shall be terminated, forfeited and be cancelled by Holdings, and the Participant shall have no further right to any Shares relating thereto.

For purposes of this Agreement, Holdings and/or the Committee, as applicable, shall determine in its sole discretion whether or not the Participant's Termination is voluntary, involuntary, or with or without Cause, whether or not the Participant has engaged in Detrimental Activity, or whether or not the Participant meets the definition of Disability or Full Career Termination.

3. AFFIDAVIT. In the event of the Termination of the Participant, the Participant may be requested, from time to time, after that Termination, to complete and sign an affidavit with respect to Competitive Activity or Detrimental Activity, which includes representations and authorizes Holdings to verify the representations. Any failure on the part of the Participant to complete, sign and return the affidavit as required may prevent the Participant from becoming entitled to any of the Award Shares or may cause the Participant to repay to Holdings the full gross amounts or Shares received under this Letter.

4. INTERIM PAYMENTS AND FURTHER AWARDS.

Holdings undertakes that provided, when dividends are declared and paid on any Shares on or after the Date of Grant, the Participant continues to be prospectively entitled to some or all of the Award Shares on fulfillment of the conditions or contingencies set out in section 2 of this Letter, it will, or it will procure that the Group Company employing the Participant award to the Participant additional Award Shares, with a value equal to such dividends paid on a corresponding number of Shares, net of any taxes applicable thereto as of the date of such dividend or distribution, subject to Paragraph 7. The Participant shall become entitled to any such additional Award Shares at the same time or times and on fulfillment of the same conditions and contingencies as those applicable to the original Award Shares to which those additional Award Shares relate.

5. TRANSFER OF SHARES AND LIMITATION ON

OBLIGATIONS. Subject to fulfillment of the conditions specified in section 2 of the Letter and receipt of any required taxes, Holdings or the Group Company employing the Participant shall transfer to the Participant the appropriate number of Shares and certificates therefor properly delivered on the date when such Shares are due to be delivered hereunder. The obligations of each and every Group Company shall be limited to the delivery to the Participant of Shares and in no way shall any Group Company become obligated to pay cash to the Participant, save as provided under section 4 or 8 of this Letter. If the date on which shares with respect to Award Shares are to be issued or delivered to the Participant falls on a non-business or non-trading day, such shares shall be delivered on the immediately succeeding trading day (i.e., when shares trade regular way on the New York Stock Exchange). Whenever shares with respect to Award Shares are required to be delivered on the 30th day following a specific triggering event, and such 30th day falls within the same tax year as the triggering event, the delivery may be made earlier, at the discretion of Holdings.

6. NON-ASSIGNMENT. No rights conferred by this Letter on the Participant shall be capable of being sold, transferred, assigned, pledged, hypothecated, or otherwise encumbered or disposed of, except by will or under the laws of descent and distribution. Any attempt to violate this section by the Participant or any other person claiming under or through him shall be null and void and without effect and neither Holdings nor any Group Company shall be or become obligated to issue or transfer Shares under this Letter.

7. EQUITABLE ADJUSTMENT. In the event of a Change in Capitalization occurring after the Date of Grant and before the Participant has become entitled to Shares under this Letter, the number and kind of Shares which may be issued to the Participant shall be adjusted so as to reflect that change.

8. CHANGE IN CONTROL.

- (a) **Expiration of Service Requirements Following a Change in Control.** Following a Change in Control, except to the extent that (i) the Participant is entitled to the earlier expiration of the Service Requirements pursuant to Paragraphs 2 or (ii) the Participant's 2007 Award Shares are forfeited pursuant to Paragraph 2 due to the Participant's engaging in Detrimental Activity, Termination with Cause or voluntary Termination, all of the Participant's then outstanding 2007 Award Shares shall cease to be subject to the Service Requirements upon the later of (x) 18 months following such Change in Control or (y) a date determined by the Committee that is within 15 days of November 30 of the Fiscal Year following the Fiscal Year in which the Change in Control occurs (such later date, the "Change in Control Service Requirement Expiration Date"). Additionally, all of the Participant's 2007 Award Shares (including Principal and Discount) shall immediately cease to be subject to the Service Requirements in the event of the Participant's involuntary Termination without Cause following the Change in Control but prior to the Change in Control Service Requirement Expiration Date.
- (b) **Delivery of Common Stock Following a Change in Control.** Following a Change in Control, except to the extent that (i) the Participant is entitled to receive earlier delivery of Shares pursuant to Paragraph 2 or (ii) the Participant's 2007 Award Shares are forfeited pursuant to Paragraph 2 due to engaging in Detrimental Activity, Termination with Cause or voluntary Termination or by reason of Paragraphs 6 or 15, the Participant shall receive Shares in respect of the Participant's 2007 Award Shares on the Change in Control Service Requirement Expiration Date; provided, however, that in the event of the Participant's Termination for any reason other than due to death or Disability following the Change in Control but prior to the Change in Control Service Requirement Expiration Date, the Participant shall receive Shares in respect of the Participant's then Award Shares as to which the Service Requirement no longer applies upon the earlier of (x) the last day of the fiscal quarter that ends after the first anniversary of the date of the Participant's Termination or (y) the Change in Control Service Requirement Expiration Date.

For purposes of this Paragraph 8, the term "Fiscal Year" shall refer to the fiscal year of Holdings.

9. AMENDMENT. The terms of this Letter may be amended from time to time by the Committee in its sole discretion in any manner that it deems appropriate (including, but not limited to, acceleration of the entitlement of the Participant to Shares, or interim payments under section 4, of this Letter), including, without limitation, in order to satisfy applicable requirements of Sections 162(m) and Section 409A of the Code, as amended from time to time, (whether or not the Participant's rights are adversely affected).

10. BINDING ACTIONS. Any action taken or decision made by the Committee or its designees arising out of or in connection with the construction, administration, interpretation or effect of this Letter or the Plan shall lie within its sole and absolute discretion, as the case may be, and shall be final, conclusive and binding on the Participant and all persons claiming under or through the Participant. By accepting this

Letter or other benefit under the Plan, the Participant and each person claiming under or through the Participant shall be conclusively deemed to have confirmed acceptance and ratification of, and consent to, any action taken under the Plan or this Letter by the Committee or its designees.

11. NO RIGHT TO CONTINUED EMPLOYMENT. Neither the Letter nor the Plan nor any action taken or omitted to be taken hereunder or thereunder shall be deemed to create or confer upon the Participant any right to be retained in the employment of any Group Company, or to receive subsequent Contingent Stock Awards or other Awards under the Plan. The right of any Group Company to terminate the Participant's employment at any time, or as otherwise provided by any agreement between the Participant and any Group Company, is specifically reserved.

12. APPLICABLE LAW. The validity, construction, interpretation, administration, and effect of the Plan and of its rules and regulations and rights relating to the Plan, and of this Letter and rights arising under it, shall be governed by the substantive laws, but not the choice of law rules, of the State of Delaware, United States of America.

13. SUBMISSION TO JURISDICTION. The Participant, Holdings, and any Group Company employing the Participant agree that any issue concerning or relating to this Letter or to the acquisition or possible acquisition of Shares by the Participant hereunder shall be referred to the courts of the State of Delaware, United States of America, for determination.

14. STOCKHOLDER RIGHTS. The Participant and any transferee of this Letter following his death shall have no rights as a stockholder with respect to any Share covered by this Letter until he shall have become the holder of record of such Share.

15. TAXES/DEDUCTIONS. It shall be a condition of the obligation of any Group Company to issue or transfer Shares under this Letter that (a) the Participant (or, in the event of his death, his estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of his death) pay (or cause to be paid) to the relevant Group Company, on its demand, in accordance with the Plan, either in the form of cash or freely transferable Shares, such amount as is required to satisfy its obligation or the obligation of any other person to account for any taxes properly payable in respect of the grant, vesting or delivery hereunder or any interim payments under section 4 of this Letter to which the Participant becomes entitled; (b) where determined necessary or appropriate by the Firm in its sole discretion, the Participant directs the sale of any Shares delivered in respect of any 2007 Award Shares to satisfy any such amounts in Paragraph 15(a) hereof, and (c) that the Participant (or, in the event of his death, his estate or any person who acquires the right to this award by bequest or inheritance or otherwise by reason of his death) provide the relevant Group Company with any duly completed and executed forms, documents or other information reasonably required by the Group Company in respect of those Shares or interim payments. If the amount required for the payment of any such taxes is not paid, the Participant hereby directs Holdings to withhold the relevant Shares and/or related interim payments and to otherwise sell Shares delivered hereunder to fulfill all obligations in respect of such taxes. Any Group Company shall further have the right to deduct from all amounts remaining payable to the Participant after satisfaction of any taxes, the amount of any deficit, debt, tax obligation or other

liability or obligation of any kind which the Participant may at that time have with respect to any Group Company provided, however, that no such right to deduct or offset shall arise or otherwise be deemed to arise until the date upon which Shares are deliverable hereunder.

16. CODE SECTION 409A. It is intended that none of the Award Shares or payments otherwise due hereunder shall be deferred, accelerated, extended, paid out or modified in a manner that would result in the imposition upon the Participant of an additional tax under Section 409A of the Code; provided that neither Holdings nor any of its employees or representatives shall have any liability to the Participant with respect to any such taxes. In the event that it is reasonably determined by the Committee that, as a result of Section 409A of the Code, payments hereunder may not be made at the time contemplated by the terms of this Agreement or the Plan, as the case may be, without causing the Participant to be subject to taxation under Section 409A of the Code, Holdings will make such payment on the first day that would not result in the Participant's incurring any tax liability under Section 409A of the Code. In the case of a Participant who is a "specified employee" (within the meaning of Section 409A(a)(2)(B)(i) of the Code), payments and/or deliveries of Shares hereunder that are linked to the date of the Participant's separation from service shall not be made prior to the date which is six (6) months after the date of such Participant's separation from service from Holdings and its affiliates, determined in accordance with Section 409A of the Code and the regulations promulgated thereunder.

17. COMPLIANCE WITH LAW. Notwithstanding any of the provisions hereof, the Participant hereby agrees that the Group Company will not be obligated to issue or transfer any Shares to the Participant hereunder, if the issuance or transfer of such Shares shall constitute a violation by the Participant or any Group Company of any provisions of any law or regulation of any governmental authority applicable to the Letter. Any determination in this connection by Holdings shall be final, binding, and conclusive.

18. ENTIRE AGREEMENT. The Letter sets forth the entire agreement and understanding between the parties hereto and supersedes all prior agreements relating to the subject matter hereof.

APPENDIX

1. In the Letter, these terms shall have these meanings:

"Affiliate" means any corporation or other entity, which is not a subsidiary but as to which Holdings possesses a direct or indirect ownership interest and has representation on the board of directors or any similar governing body.

"Appropriate Officer" means the Chief Executive Officer or Chief Operating Officer of Holdings (or their respective designees).

"Board" means the board of directors of Holdings.

"Cause" means a material breach by a Participant of his employment contract with any one or more of the Group Companies, failure by the Participant to devote substantially all business time exclusively to the performance of his employment duties with a Group Company, willful misconduct, dishonesty relating to the business and affairs of any Group Company, conviction of a criminal offense being or equivalent to a felony or a misdemeanor constituting a statutory disqualification under United States securities laws (or failure to contest prosecution for a felony or such a misdemeanor), habitual or gross negligence in

the performance of the Participant's duties under his employment with a Group Company, solicitation of employees of a Group Company to work for any employer other than a Group Company, improper use or disclosure of confidential information relating to any Group Company, its business affairs or clients, the violation of policies and practices adopted by any Group Company or a material violation of the conflict of interest, proprietary information or business ethics policies of any Group Company, or such other circumstances as may be determined in the sole discretion of an Appropriate Officer. For avoidance of doubt, for purposes of the preceding sentence, a material breach of an employment contract or violation of policies would include, as applicable, the employee's violation of any policy or employment agreement relating to the obligation to provide advance notice of resignation from Holdings or any Group Company.

"Change in Capitalization" means the occurrence of a circumstance described in Section 14 of the Plan.

"Committee" means the Compensation and Benefits Committee of the Incumbent Board (see definition of Change in Control in the Plan).

"Competitive Activity" means involvement (whether as an employee, proprietor, consultant or otherwise) with any person or entity (including any company and its affiliates) engaged in any business activity which is materially competitive with any business carried on by any Group Company on the date of termination of the Participant's employment with any of the Group Companies, as determined in the sole discretion of an Appropriate Officer.

"Detrimental Activity" means at any time (i) using confidential information received during employment with Holdings or any other Group Company relating to the business affairs of any Group Company, any of their affiliates, or any of their clients, in breach of such Participant's undertaking to keep such information confidential; (ii) direct or indirect persuasion or any attempt to persuade by any means, any employee of any Group Company to terminate his employment with any of those corporations or entities or to breach any of the terms of his employment with any Group Company; (iii) directly or indirectly making any statement that is, or could be disparaging of Holdings or any Group Company, or any of their employees (except as necessary to respond truthfully to any inquiry from applicable regulatory authorities or to provide information pursuant to legal process); or (iv) directly or indirectly engaging in any activity that is, or could be, substantially injurious to the financial condition, reputation or goodwill of Holdings or any Group Company, in each case as determined in the sole discretion of an Appropriate Officer.

"Disability" means a disability, which meets the criteria under both the Long-Term Disability Insurance Plan and the United States Social Security Act.

"Discount Award Shares" means the number of 2007 Award Shares (and any dividend equivalents related thereto). If Participant was a Managing Director of Holdings or any Group Company for the fiscal year ended November 30, 2007, thirty percent (30%) of Participant's 2007 Award Shares as of the date of grant will be Discount Award Shares. If Participant is an employee other than a Managing Director of Holdings or any Group Company for the fiscal year ended November 30, 2007, twenty-five percent (25%) of Participant's 2007 Award Shares as of the date of grant will be Discount Award Shares.

"Exchange Act" means the United States Securities Exchange Act of 1934, as later amended, modified, or substituted.

"Full Career Termination" means a Termination when (i) a person has at least 20 years of service, (ii) the person is at least 45 years old, and the person has at least 10 years of service; or (iii) the person is at least 50 years old, and the person has at least 5 years of service.

"Group" means Holdings and all its Subsidiaries and Affiliates, and

"Group Company" shall mean any entity within the Group. Holdings and/or the Committee, as applicable, shall determine in its sole discretion whether or not an entity is or is not a "Group Company" for purposes of any provision of this Agreement.

"Person" has the same meaning as in section 13(d) or 14(d) of the Exchange Act.

"Plan" means the Lehman Brothers Holdings Inc. 2005 Stock Incentive Plan.

"Service Requirements" means the schedule below that is applicable to the Participant, pursuant to which the Participant is required to be actively employed with the Company and/or any Group Company as described in Paragraph 2, and which, except as provided in Paragraphs 2(c), 2(d)(i), (iii), (iv) and (v) and 8, shall be a necessary condition for the Participant to become entitled to receive both 2007 Award Shares and Shares underlying such 2007 Award Shares provided the Participant otherwise satisfies the other terms and conditions hereunder:

(a) If the Participant was a Managing Director of Holdings or any Group Company for the fiscal year ended November 30, 2007, such Participant is required to remain actively employed with the Company and/or any Group Company through the date specified below in order to be eligible to receive that portion of such 2007 Award Shares (and the Shares in respect thereof) specified next to such date, subject in all cases, to the other terms and conditions herein:

Principal Award Shares: 50%: November 30, 2010;
50%: November 30, 2012

Discount Award Shares: 100%: November 30, 2012.

(b) If Participant was an employee of Holdings or any Group Company other than a Managing Director for the fiscal year ended November 30, 2007 such Participant is required to remain actively employed with the Company and/or any Group Company through the date specified in order to be eligible to receive that portion of such 2007 Award Shares (and the Shares in respect thereof) specified next to such date, subject in all cases, to the other terms and conditions herein:

Principal Award Shares: 100%: November 30, 2009
Discount Award Shares: 100%: November 30, 2012.

"Principal Award Shares" shall mean the number of 2007 Award Shares (and any dividend equivalents related thereto) related to the undiscounted base portion of the award. If the Participant was a Managing Director of Holdings or any Group Company for the fiscal year ended November 30, 2007, seventy percent (70%) of such Participant's 2007 Award Shares as of the Date of Grant will be Principal Award Shares. If Participant is an employee other than a Managing Director of Holdings or any Group Company for the fiscal year ended November 30, 2007, seventy-five percent (75%) of such

Participant's 2007 Award Shares as of the Date of Grant will be Principal Award Shares.

"Share" means a share of Common Stock of Holdings, par value of \$0.10 per share.

"Share Payment Date" means November 30, 2012.

"Subsidiary" means any corporation or other Person of which a majority of its voting power or its voting equity securities or equity interest is owned directly or indirectly by Holdings.

"Termination" means the end of active employment with Holdings or any Group Company. The characterization of the circumstances of Termination is determined in the sole discretion of an Appropriate Officer.

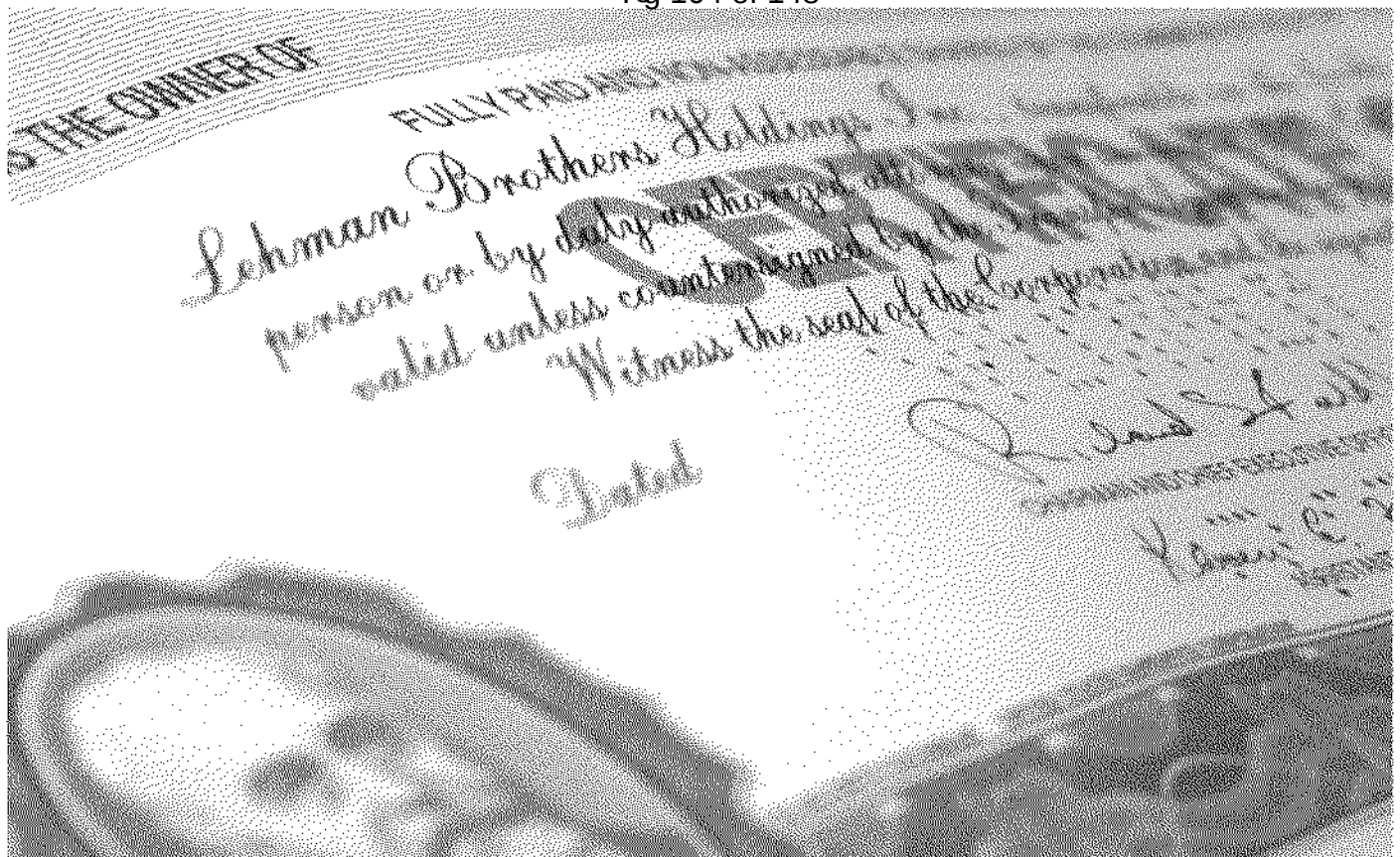
"Voting Securities" means the outstanding Shares of capital stock of Holdings having ordinary voting power in the election of directors.

2. In this Letter, any reference to the singular shall include the plural and vice versa and any reference to the masculine gender shall include a reference to all other genders.

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EXHIBIT 14



2008 EQUITY AWARD PROGRAM

L I F E • L E H M A N
YOUR BENEFITS AND LIFE BALANCE

Questions and Answers for Bonus-Eligible Employees
and Production-Based Employees

THIS DOCUMENT IS PROVIDED FOR INFORMATION PURPOSES ONLY. These Questions and Answers are intended to provide a general overview of the 2008 Equity Award Program. All terms and conditions of the 2008 Equity Award Program are subject to the applicable controlling plan documents, including but not limited to the Restricted Stock Unit Award Agreement, the 2005 Stock Incentive Plan, and the 2005 Stock Incentive Plan Prospectus. In the event of any conflict between the plan documents and the information in this document, the plan documents will govern.

LEHMAN BROTHERS

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OVERVIEW OF 2008 CHANGES

Q1 HOW WILL THE 2008 EQUITY AWARD DIFFER FROM LAST YEAR'S AWARD?

A1 The Firm reviews the terms of the Equity Award Program annually and based on input from many employees has decided on several changes for 2008. These changes are designed to achieve a number of objectives, including:

- **Simplifying the program**: the Equity Award Program has been the only one among our competitors with multiple vesting schedules and deferral levels based on corporate title;
- **Aligning the program more closely with competitor programs**: the Equity Award Program in past years has provided an equity award discount, but the awards have been subject to the longest vesting and sales restrictions among our competitors.
 - Among our major competitors, Goldman Sachs, JP Morgan, Merrill Lynch, and Morgan Stanley provide no discount on employee equity awards.
- **Preserving our ownership culture**: as in the past, the overall objective of the Firm's Equity Award Program is to ensure multi-year alignment with shareholders through significant ownership stakes for employees.

As in prior years, 100% of the 2008 equity award will be in the form of Restricted Stock Units ("RSUs"). The 3 primary changes to the 2008 program are:

1. **Equity Discount**: Beginning with the 2008 equity award, employees will **no longer be granted RSUs at a discount** from their fair market value at the time of grant. However, RSUs will be subject to a much shorter holding period. See "Holding Period" below.
2. **Vesting Schedule**: Under the 2008 Equity Award Program, the vesting schedule for all employees will be the same, irrespective of corporate title: **33% per year over 3 years** (1/3 vesting on November 30, 2009, 1/3 vesting on November 30, 2010, and 1/3 vesting on November 30, 2011, respectively).
3. **Holding Period**: In 2008, the holding period will be reduced from 5 years to **3 years**. This means that vested 2008 RSUs will convert to shares of Lehman Brothers common stock in 2011, rather than in 2013.

Q2 WHEN WILL I BE GRANTED MY 2008 EQUITY AWARD?

- A2 Eligible employees' 2008 equity award will comprise two separate grants on **two dates**: a) a grant on July 1, 2008 (the "July RSUs") and b) a grant at a date to be determined by Compensation and Benefits Committee of the Board of Directors during the fourth quarter (the "Year-end Award"). You can consider the July award, which is generally 20% of the 2007 award, as an advance on any full-year 2008 award that you may receive. The July RSUs and any Year-end Award will vest and deliver on the same schedule (see below).

This special off-cycle grant underscores our confidence in Lehman Brothers' future and provides each of us with an opportunity to take advantage of the upside potential in our stock price. Further information on the July award is provided in the "July Award" section below.

Q3 HOW WILL 2008 EQUITY AWARD LEVELS COMPARE TO LAST YEAR?

- A3 For 2008, we have simplified the Equity Award Schedule by consolidating the 3 separate schedules (for MDs, SVPs, and employees through the VP level) into one schedule applicable to bonus-eligible employees¹ regardless of corporate title and based on total compensation levels. In general, for bonus-eligible employees the percentage of 2008 total compensation delivered in equity awards will **increase** from 2007, with the maximum percentage increasing from 50% to 65%; for employees earning \$100,000 or less in total compensation, however, the percentages are about the same as in 2007.

See Exhibit A for the 2007 Equity Award Schedule and Exhibit B for the 2008 Equity Award Schedule for bonus-eligible employees.

Note that for production-based² and certain other employees, the schedule will be as previously communicated. See Exhibit C for the 2008 Equity Award Schedule for production-based employees.

¹ For purposes of this document, all references to "bonus-eligible" employees refer to employees who are not considered "production-based" (see footnote 2 below) and who would be eligible to receive a year-end 2008 discretionary bonus, assuming continued employment in accordance with the bonus policy. Note that for individuals with written compensation guarantees for 2008, the Equity Award Schedule applicable for the determination of your full-year equity award is the schedule communicated as part of your guarantee.

² For purposes of the Equity Award Program, "production-based" employees are those employees, like Investment Representatives, who throughout the performance year receive production-based compensation a portion of which is cash (e.g., commissions) and a portion of which represents an accrual toward a year-end equity award. "Production-based" employees typically do not receive any year-end bonus. Employees are classified as "production-based" or "bonus-eligible" in the Firm's discretion. If you have questions about your classification, please contact the Compensation Department or your Human Resources representative.

July Award

Q4 WHO IS ELIGIBLE FOR A JULY EQUITY AWARD?

- A4 Employees whose employment started on or before July 1, 2008 are generally eligible for a July equity award for 2008, including employees on an approved leave of absence. Certain employees will not receive a July award, including, among others: employees currently in the Firm's formal Analyst Programs (including recently "promoted" Analysts), certain part-time, temporary or seasonal employees, employees on long-term disability, employees who have given notice or have been notified of their termination, certain employees in proprietary trading roles, employees notified that they will not be receiving a July award, and individuals employed by certain subsidiaries. In addition, in the case of production-based employees, anyone with a 2008 equity award accrual from January 2008 through June 2008 is eligible for a July award.

Q5 HOW WAS THE VALUE OF MY JULY EQUITY AWARD CALCULATED?

A5 Bonus-eligible Employees

For most employees (hired on or prior to December 1, 2006), the value of the July RSUs was calculated as 20% of the principal portion³ of the 2007 equity award. In other words, the July award is based on 2007 compensation applied to the 2007 Equity Award Schedule in Exhibit A, multiplied by 20%.

If you joined the Firm during fiscal year 2007, the July RSUs were calculated based on your 2007 annual base salary, additional eligible compensation for 2007, and any 2007 paid bonus.

If you joined the Firm during fiscal year 2008, the July RSUs were calculated based on your 2008 annual base salary, additional eligible compensation for 2008, and any 2008 written compensation guarantee.

The use of 2007 compensation for the purposes of calculating the July RSUs does not indicate any right or eligibility for compensation in 2008 (or 2008 compensation at any particular level or range) or to any additional equity award for the 2008 performance year.

Production-based Employees

Your July RSUs have been calculated based upon your **annualized** production payout and other compensation, after all adjustments, for production months December 2007 through May 2008 (relating to pay periods from January through June 2008). See Exhibit D for examples of how the July equity award was determined.

³ The principal portion of the 2007 equity award was the amount awarded as part of your 2007 total compensation (before the discount).

Q6 HOW MANY JULY RSUs HAVE I BEEN GRANTED?

- A6 To determine the number of July RSUs you have been granted, simply take the value calculated using the methodology described in Question 5 above and divide it by the grant price of \$20.96, the closing stock price of Lehman Brothers common stock on July 1, 2008.

Example (for a VP hired prior to December 1, 2006):

2007 Total Compensation	Principal Portion of 2007 Award	July Award (@20%)	July Grant Price	Number of July RSUs
\$200,000	\$9,200	\$1,840	\$20.96	87.79

Note that if the calculation results in fewer than three (3) July RSUs, then no July RSUs will be granted.

Q7 WHY IS THE JULY EQUITY AWARD ONLY 20% OF LAST YEAR'S AWARD?

- A7 As in prior years, equity awards are intended as part of an employee's total compensation for the full performance year, and are therefore determined and granted at the time of any year-end bonuses. Because bonus compensation is fully discretionary (unless guaranteed in writing in accordance with Firm policy), the equity portion of total compensation for 2008 cannot be determined at this time. To maintain sufficient flexibility in the determination of pay for 2008—and to minimize the risk that employee cash bonuses are not adversely impacted—the Firm decided that the July award would be based on 20% of the prior year award for most employees. Please bear in mind that a July RSU award does not indicate any right to a discretionary bonus (or any particular amount of discretionary bonus) or to any additional equity award for the 2008 performance year.

Q8 HOW WERE THE GRANT DATE AND GRANT PRICE FOR THE JULY AWARD DETERMINED?

- A8 All equity grants to employees must be authorized and approved by the Compensation and Benefits Committee of the Board of Directors. The July 1 grant date was set by the Committee. The grant price for the July award is the closing market price of Lehman Brothers common stock on the New York Stock Exchange on that date, \$20.96, and is used to determine the number of July RSUs granted to you.

Q9 WHAT WILL HAPPEN TO MY JULY AWARD IF I LEAVE THE FIRM PRIOR TO NOVEMBER 30, 2008?

A9 Bonus-eligible Employees

If your employment with the Firm ceases, for any reason, prior to November 30, 2008, you will forfeit the July RSUs. If you leave the Firm on or after November 30, 2008, your entitlement to any July RSUs, the same as any Year-end Award, will depend on when you leave, the

circumstances under which you leave, and your conduct with respect to the Firm after you leave.

Production-based Employees

Your entitlement to the July award will depend on when you leave the Firm, why you leave, and your conduct with respect to the Firm after you leave.

Refer to the termination provisions on Exhibit E.

YEAR-END AWARD

Q10 WHO IS ELIGIBLE FOR A 2008 YEAR-END EQUITY AWARD?

A10 Employees (both bonus-eligible and production-based employees) whose employment started on or before the 2008 grant date, expected to be determined during the fourth quarter (the "Year-end Grant Date"), including employees on an approved leave of absence, are eligible to receive a year-end equity award for 2008, with the following exceptions: employees in the Firm's formal Analyst Programs, certain temporary, part-time or seasonal employees, employees on long-term disability, employees who have given notice or have been notified of their termination; and individuals employed by certain subsidiaries. Any bonus-eligible employee whose employment terminates prior to the Year-end Grant Date, or who is otherwise not eligible for a year-end bonus, will not be eligible for a year-end equity award. In case of termination of employment of production-based employees or individuals with a written compensation guarantee, any year-end equity awards will be treated in accordance with the relevant plan provisions or terms of the written compensation guarantee.

Q11 HOW WILL MY 2008 YEAR-END EQUITY AWARD BE CALCULATED?

A11 Bonus-eligible Employees

Your Year-end equity award will be calculated based on your 2008 total compensation and the 2008 Equity Award Schedule for bonus-eligible employees shown on Exhibit B, reduced by the grant-date value of any July award. In no event, however, will your full-year award be less than your July Award. Total compensation includes salary earned in fiscal year 2008 plus any bonus and additional eligible compensation for your performance in 2008, whether such amounts are deferred or paid in 2008.

Note that for individuals with written compensation guarantees for 2008, the Equity Award Schedule applicable for the determination of your full-year equity award will be the one communicated as part of your guarantee. In all other respects, your 2008 Equity Award will be governed by the applicable 2008 Equity Award Program plan documents.

Production-based Employees

Your Year-end equity award will be calculated as above, except that it will be based on the 2008 Equity Award Schedule for production-based employees shown on Exhibit C and your actual production and other compensation, after all adjustments, for production months December 2007 through November 2008 (relating to pay periods from January through December 2008), reduced by the grant date value of any July award. In no event, however, will your full-year award be less than your July Award. Refer to Exhibit D for an illustration of how the 2008 Equity Award will be calculated for production-based employees.

Note that the 2009 Equity Award Schedule for production-based employees will be communicated no later than December 31, 2008.

2008 VESTING AND TERMINATION PROVISIONS

Q12 WHEN WILL MY 2008 RSUs VEST?

A12 The 2008 equity award (including any July RSUs) will vest in 1/3 increments on November 30, 2009, 2010 and 2011.

Q13 WHEN WILL MY 2008 RSUs CONVERT TO SHARES OF COMMON STOCK?

A13 Vested 2008 RSUs (including any July RSUs) will convert to shares of Lehman Brothers common stock on November 30, 2011.

Q14 WHAT WILL HAPPEN TO MY 2008 RSUs IF I RESIGN FROM THE FIRM?

A14 If you resign, you will forfeit all RSUs that are unvested at the time of your termination, unless you are eligible for Full Career treatment at the time of termination.

	% of Total Equity Award Retained		
	<i>If you resign from the Firm after November 30 of:</i>		
	<u>2009</u>	<u>2010</u>	<u>2011</u>
All Employees	33%	67%	100%

If you resign and your termination is deemed a Full Career termination, you will be entitled to 100% of your 2008 RSUs, and shares of Lehman Brothers common stock will be delivered to you on November 30, 2011, provided you satisfy all delivery conditions in your award agreements, do not engage in Detrimental Activity through November 30, 2011, and do not engage in Competitive Activity through the earlier of: (1) the end of the fiscal quarter 1 year following your termination and (2) November 30, 2011.

For bonus-eligible employees, note that "Full Career" treatment is not applicable for resignations occurring before November 30, 2008. See Exhibit E for termination provisions.

Q15 WHAT WILL HAPPEN TO MY 2008 RSUs IF MY EMPLOYMENT IS TERMINATED?

A15 As in prior years, if your employment with the Firm is terminated involuntarily without Cause, you will generally be eligible to retain your (otherwise forfeited) unvested 2008 RSUs, provided you sign a Firm-standard release agreement in accordance with Firm policy and provided you do not engage in Detrimental Activity. Your 2008 RSUs will convert to Lehman Brothers common stock and shares will be delivered on November 30, 2011. (If you do not sign a release agreement, you will be eligible to receive only the vested portion of your award.)

Note that the above does not apply to terminations occurring before November 30, 2008. Bonus-eligible employees whose employment ends for any reason before November 30, 2008 forfeit any July RSUs and are not entitled to any Year-end Award.

Note also that if you are terminated involuntarily with Cause, you will forfeit all outstanding RSUs. See Exhibit E for termination provisions.

GENERAL INFORMATION

Q16 WHERE CAN I FIND DETAILS REGARDING MY JULY AWARD AND MY OTHER EQUITY AWARDS?

A16 Details of your equity awards can be found on the Personal Award Summary of the Equity Award Program section of LehmanLive, which you can access by using keyword *equityaward*. The number of July RSUs you were awarded, if any, will be available on LehmanLive by **July 15, 2008**.

Q17 DO ANY OF THE CHANGES TO THE EQUITY AWARD PROGRAM AFFECT AWARDS GRANTED IN PRIOR YEARS?

A17 No. The changes outlined here apply only to awards granted in 2008. These changes will not be retroactive to awards granted in prior years.

Q18 WHOM DO I CONTACT IF I HAVE FURTHER QUESTIONS REGARDING THE EQUITY AWARD PROGRAM?

A18 If you have any questions regarding the Equity Award Program, please contact the Compensation Department in New York at (212) 526-8346 or by e-mail at compensation@lehman.com.

EXHIBIT A: 2007 EQUITY AWARD SCHEDULE

Total Compensation Range	AMOUNT OF TOTAL COMPENSATION ("TC") IN EQUITY-BASED AWARDS		
	<i>Employees Through Vice President Level</i>	<i>Senior Vice Presidents</i>	<i>Managing Directors</i>
\$0 - \$74,999	1.15% of 2007 TC	2.3% of 2007 TC	2.3% of 2007 TC
\$75,000 - \$99,999	2.3% of 2007 TC	2.3% of 2007 TC	2.3% of 2007 TC
\$100,000 - \$199,999	\$2,300 plus 6.9% of 2007 TC over \$100,000	\$2,300 plus 6.9% of 2007 TC over \$100,000	\$2,300 plus 6.9% of 2007 TC over \$100,000
\$200,000 - \$299,999	\$9,200 plus 11.5% of 2007 TC over \$200,000	\$9,200 plus 11.5% of 2007 TC over \$200,000	\$9,200 plus 11.5% of 2007 TC over \$200,000
\$300,000 - \$499,999	\$20,700 plus 17.25% of 2007 TC over \$300,000	\$34,500 plus 18.687% of 2007 TC over \$300,000	\$34,500 plus 18.687% of 2007 TC over \$300,000
\$500,000 - \$749,999	\$55,200 plus 23% of 2007 TC over \$500,000	\$71,875 plus 23% of 2007 TC over \$500,000	\$71,875 plus 23% of 2007 TC over \$500,000
\$750,000 - \$999,999	\$112,700 plus 28.75% of 2007 TC over \$750,000	\$129,375 plus 40.25% of 2007 TC over \$750,000	\$129,375 plus 40.25% of 2007 TC over \$750,000
\$1,000,000 - \$1,499,999	\$192,600 plus 36% of 2007 TC over \$1.0 million	\$240,000 plus 42% of 2007 TC over \$1.0 million	\$240,000 plus 52.8% of 2007 TC over \$1.0 million
\$1,500,000 - \$1,999,999	\$372,600 plus 42% of 2007 TC over \$1.5 million	\$450,000 plus 54% of 2007 TC over \$1.5 million	\$504,000 plus 67.2% of 2007 TC over \$1.5 million
\$2,000,000 - \$2,499,999	\$582,600 plus 48% of 2007 TC over \$2.0 million	\$720,000 plus 66% of 2007 TC over \$2.0 million	\$840,000 plus 72% of 2007 TC over \$2.0 million
\$2,500,000 and up	\$822,600 plus 54% of 2007 TC over \$2.5 million up to a max of 36% of 2007 TC	42% of 2007 TC	\$1,200,000 plus 75% of 2007 TC over \$2.5 million to a max of 50% of 2007 TC

EXHIBIT B: 2008 EQUITY AWARD SCHEDULE FOR BONUS-ELIGIBLE EMPLOYEES

The portion of 2008 total compensation delivered in the form of an equity award for the full year will be calculated according to the schedule below. Any Year-end Award will be determined by subtracting any July RSUs from your full-year award, but in no event will your full-year award be less than your July RSUs.

2008 Total Compensation Range	AMOUNT OF TOTAL COMPENSATION ("TC") IN EQUITY-BASED AWARDS ⁴		MAXIMUM % OF TC IN EQUITY- BASED AWARDS
\$0 - \$74,999	1% of 2008 TC		1%
\$75,000 - \$99,999	2% of 2008 TC		2%
\$100,000 - \$299,999	\$2,000	plus 14% of 2008 TC above \$100,000	10%
\$300,000 - \$499,999	\$30,000	plus 35% of 2008 TC above \$300,000	20%
\$500,000 - \$749,999	\$100,000	plus 35% of 2008 TC above \$500,000	25%
\$750,000 - \$999,999	\$187,500	plus 65% of 2008 TC above \$750,000	35%
\$1,000,000 - \$1,499,999	\$350,000	plus 65% of 2008 TC above \$1,000,000	45%
\$1,500,000 - \$1,999,999	\$675,000	plus 85% of 2008 TC above \$1,500,000	55%
\$2,000,000 - \$2,499,999	\$1,100,000	plus 80% of 2008 TC above \$2,000,000	60%
\$2,500,000 and above	\$1,500,000	plus 90% of 2008 TC above \$2,500,000 up to a maximum of 65% of 2008 TC	65%

⁴ Subject to a 5-share minimum.

EXHIBIT C: 2008 EQUITY AWARD SCHEDULE FOR PRODUCTION-BASED EMPLOYEES

The portion of 2008 total compensation delivered in the form of an equity award for the full year will be calculated according to the schedule below, which is the same as the one previously communicated. Any Year-end Award will be determined by subtracting any July award from your full-year award, but in no event will your full-year award be less than your July RSUs.

2008 EQUITY AWARD SCHEDULE FOR PRODUCTION-BASED EMPLOYEES

2008 Total Compensation Range	AMOUNT OF TOTAL COMPENSATION ("TC") IN EQUITY-BASED AWARDS ⁵		
	<i>Employees Through Vice President Level</i>	<i>Senior Vice Presidents</i>	<i>Managing Directors</i>
\$0 - \$74,999	1.15% of 2008 TC	2.3% of 2008 TC	2.3% of 2008 TC
\$75,000 - \$99,999	2.3% of 2008 TC	2.3% of 2008 TC	2.3% of 2008 TC
\$100,000 - \$199,999	\$2,300 plus 6.9% of 2008 TC over \$100,000	\$2,300 plus 6.9% of 2008 TC over \$100,000	\$2,300 plus 6.9% of 2008 TC over \$100,000
\$200,000 - \$299,999	\$9,200 plus 11.5% of 2008 TC over \$200,000	\$9,200 plus 11.5% of 2008 TC over \$200,000	\$9,200 plus 11.5% of 2008 TC over \$200,000
\$300,000 - \$499,999	\$20,700 plus 17.25% of 2008 TC over \$300,000	\$34,500 plus 18.687% of 2008 TC over \$300,000	\$34,500 plus 18.687% of 2008 TC over \$300,000
\$500,000 - \$749,999	\$55,200 plus 23% of 2008 TC over \$500,000	\$71,875 plus 23% of 2008 TC over \$500,000	\$71,875 plus 23% of 2008 TC over \$500,000
\$750,000 - \$999,999	\$112,700 plus 28.75% of 2008 TC over \$750,000	\$129,375 plus 40.25% of 2008 TC over \$750,000	\$129,375 plus 40.25% of 2008 TC over \$750,000
\$1,000,000 - \$1,499,999	\$192,600 plus 36% of 2008 TC over \$1.0 million	\$240,000 plus 42% of 2008 TC over \$1.0 million	\$240,000 plus 52.8% of 2008 TC over \$1.0 million
\$1,500,000 - \$1,999,999	\$372,600 plus 42% of 2008 TC over \$1.5 million	\$450,000 plus 54% of 2008 TC over \$1.5 million	\$504,000 plus 67.2% of 2008 TC over \$1.5 million
\$2,000,000 - \$2,499,999	\$582,600 plus 48% of 2008 TC over \$2.0 million	\$720,000 plus 66% of 2008 TC over \$2.0 million	\$840,000 plus 72% of 2008 TC over \$2.0 million
\$2,500,000 and up	\$822,600 plus 54% of 2008 TC over \$2.5 million up to a max of 36% of 2008 TC	42% of 2008 TC	\$1,200,000 plus 75% of 2008 TC over \$2.5 million to a max of 50% of 2008 TC

⁵ Subject to a 5-share minimum.

EXHIBIT D: 2008 EQUITY AWARD CALCULATION FOR PRODUCTION-BASED EMPLOYEES

Your 2008 equity award will be calculated based on your 2008 production compensation and the 2008 Equity Award Schedule shown in Exhibit C, less the portion of compensation granted as July RSUs, if any. The examples below assume an individual with production compensation for the full year 2008.

Actual 2008 Production Compensation (through May production month):	\$125,000
Annualized 2008 Production Compensation (x 12 ÷ 6):	\$250,000
Annualized Equity Award (from Schedule for employees through VP level):	\$14,950
July Award (20% of Annualized Award):	\$2,990
Assumed 2008 Production Compensation:	\$250,000
Total 2008 Equity Award:	\$14,950
July Award:	\$2,990
2008 Year-End Equity Award:	<u>\$11,960</u>
Total 2008 Equity Award:	\$14,950

EXHIBIT E: TERMINATION PROVISIONS

	All Employees
Voluntary Termination <i>(but not Full Career)</i>	Participants will forfeit all unvested July RSUs and Year-end RSUs (together, "2008 RSUs"). Any vested 2008 RSUs will convert to shares of common stock and such shares will be delivered as soon as practicable after November 30, 2011 (the "Share Payment Date") but not later than December 31, 2011, provided the participant does not engage in Detrimental Activity through that date and has not committed an act constituting Cause through the termination date.
Involuntary Termination <i>(but not Full Career)</i>	<p>Involuntary Termination without Cause: Participants will become entitled to 100% of their 2008 RSUs, including the unvested portion (provided the employee signs a Firm-standard release agreement). Shares will be delivered as soon as practicable after the Share Payment Date, but not later than December 31, 2011, provided the participant does not engage in Detrimental Activity through that date.</p> <p>Involuntary Termination with Cause: Participants will forfeit 100% of their 2008 RSUs.</p>
Full Career Termination	<p>Voluntary Termination: Participants will become entitled to 100% of their 2008 RSUs on the Share Payment Date, provided they do not engage in Competitive Activity through the end of the fiscal quarter following the one year anniversary of the termination date, and do not engage in Detrimental Activity through the Share Payment Date or commit an act constituting Cause through the termination date. 2008 RSUs will convert to shares of common stock, and such shares will be delivered as soon as practicable following the Share Payment Date, but not later than December 31, 2011.</p> <p>Involuntary Termination without Cause: Participants will become entitled to 100% of their 2008 RSUs on the Share Payment Date, provided they do not engage in Detrimental Activity through that date or commit an act constituting Cause prior to the termination date. 2008 RSUs will convert to shares of common stock, and such shares will be delivered as soon as practicable after the Share Payment Date but not later than December 31, 2011.</p> <p>Involuntary Termination with Cause: Participants will forfeit 100% of their 2008 RSUs.</p>
Termination due to Death or Disability	All 2008 RSUs will immediately vest, and shares will be delivered 30 days following the termination date.

NOTE: Notwithstanding the above, bonus-eligible employees whose employment ends for any reason (voluntary or involuntary termination) prior to November 30, 2008 will forfeit all July RSUs. In such cases, "Full Career" treatment does not apply.

EXHIBIT F: GLOSSARY OF SELECT TERMS

"Appropriate Officer" means the Chief Executive Officer or Chief Operating Officer of Holdings (or their respective designees).

"Cause" means a material breach by a person of an employment contract between the person and Holdings or any subsidiary, failure by a person to devote substantially all business time exclusively to the performance of his or her duties for Holdings or any subsidiary, willful misconduct, dishonesty related to the business and affairs of Holdings or any subsidiary, conviction of a felony or a misdemeanor constituting a statutory disqualification under U.S. securities laws (or failure to contest prosecution for a felony or such a misdemeanor), habitual or gross negligence in the performance of a person's duties, solicitation of employees of Holdings or any subsidiary to work at another company, improper use or disclosure of confidential information, the violation of policies and practices adopted by Holdings or any subsidiary including, but not limited to the Code of Conduct, or a material violation of the conflict of interest, proprietary information or business ethics policies of Holdings or any subsidiary, or such other circumstances as may be determined in the sole discretion of an Appropriate Officer. For avoidance of doubt, for purposes of the preceding sentence, a material breach of an employment contract or violation of policies would include, as applicable, the employee's violation of any policy or employment agreement relating to the obligation to provide advance notice of resignation from Holdings or any subsidiary.

"Competitive Activity" means involvement (whether as employee, proprietor, consultant or otherwise) with any person or entity (including any company and its affiliates) engaged in any business activity which is materially competitive with any business carried on by Holdings or any of its subsidiaries or affiliates on the date of termination of a person's employment with Holdings and any of its subsidiaries, as determined in the sole discretion of an Appropriate Officer.

"Detrimental Activity" means (i) using information received during a person's employment with Holdings or any of its subsidiaries related to the business affairs of Holdings or any of its subsidiaries, affiliates or their clients, in breach of such person's undertaking to keep such information confidential; (ii) directly or indirectly persuading or attempting to persuade, by any means, any employee of Holdings or any of its subsidiaries or affiliates to terminate employment with any of the foregoing or to breach any of the terms of his or her employment with the foregoing; (iii) directly or indirectly making any statement that is, or could be, disparaging of Holdings, its subsidiaries or affiliates, or any of their employees (except as necessary to respond truthfully to any inquiry from applicable regulatory authorities or to provide information pursuant to legal process); (iv) violating policies and practices adopted by Holdings or any subsidiary; (v) materially breaching any contract between the person and Holdings or any subsidiary; or (vi) directly or indirectly engaging in any activity that is, or could be, substantially injurious to the financial condition, reputation, or goodwill of Holdings or its subsidiaries or affiliates, in each case as determined in the sole discretion of the Chief Executive Officer or Chief Operating Officer of Holdings (or their respective designees). Notwithstanding the foregoing, if following any termination of employment other than for Cause but prior to the scheduled Share Payment Date it is determined that an act constituting Cause has occurred which was not determined by Holdings (or its designee) at the time of such termination, such act shall also be deemed to constitute Detrimental Activity.

"Disability" means a disability under both the Lehman Brothers Long-Term Disability Insurance Plan and the Social Security Act.

"Full Career Termination" means a Termination of employment with Holdings or any subsidiary when (a) a person has at least 20 years of service; (b) the person is at least 45 years old, and the person has at least 10 years of service with Holdings or any subsidiary; or (c) the person is at least 50 years old, and the person has at least 5 years of service with Holdings or any subsidiary.

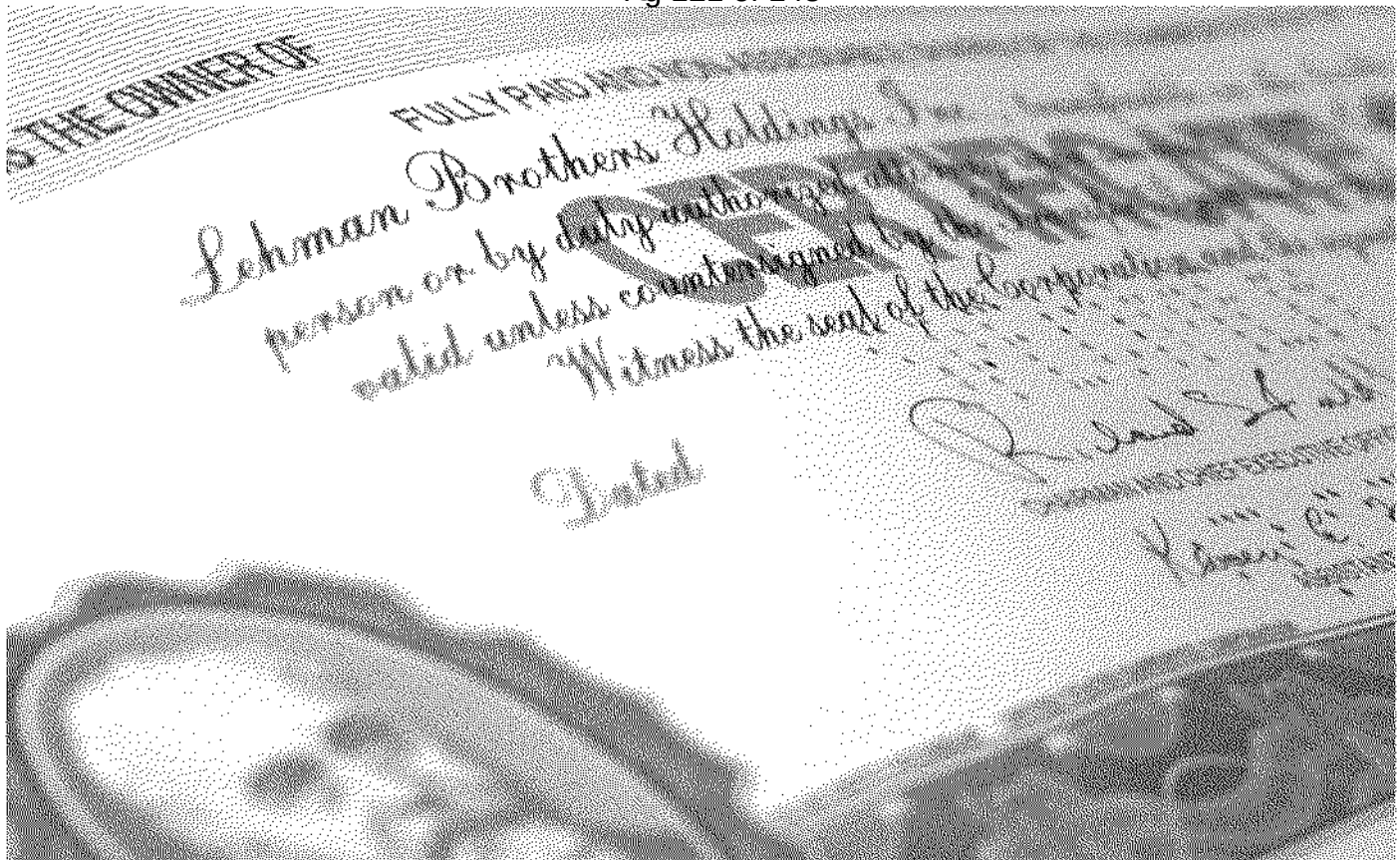
"Restricted Stock Units (RSUs)" An RSU represents the conditional right to receive one share of Lehman Brothers common stock three years after the grant date, on November 30, 2011. Generally, RSUs cannot be sold, traded, pledged or transferred during that three-year period.

"Termination" means the end of employment with Holdings or a subsidiary. The characterization of the circumstances of Termination is determined in the sole discretion of an Appropriate Officer.

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EXHIBIT 15



2008 EQUITY AWARD PROGRAM

L I F E • L E H M A N

YOUR BENEFITS AND LIFE BALANCE

Questions and Answers for Bonus-Eligible Employees
and Production-Based Employees

THIS DOCUMENT IS PROVIDED FOR INFORMATION PURPOSES ONLY. These Questions and Answers are intended to provide a general overview of the 2008 Equity Award Program. All terms and conditions of the 2008 Equity Award Program are subject to the applicable controlling plan documents, including but not limited to the Contingent Stock Award Letter, the 2005 Stock Incentive Plan, and the 2005 Stock Incentive Plan Prospectus. In the event of any conflict between the plan documents and the information in this document, the plan documents will govern.

LEHMAN BROTHERS

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OVERVIEW OF 2008 CHANGES

Q1 HOW WILL THE 2008 EQUITY AWARD DIFFER FROM LAST YEAR'S AWARD?

A1 The Firm reviews the terms of the Equity Award Program annually and based on input from many employees has decided on several changes for 2008. These changes are designed to achieve a number of objectives, including:

- **Simplifying the program**: the Equity Award Program has been the only one among our competitors with multiple vesting schedules and deferral levels based on corporate title;
- **Aligning the program more closely with competitor programs**: the Equity Award Program in past years has provided an equity award discount, but the awards have been subject to the longest vesting and sales restrictions among our competitors.
 - Among our major competitors, Goldman Sachs, JP Morgan, Merrill Lynch, and Morgan Stanley provide no discount on employee equity awards.
- **Preserving our ownership culture**: as in the past, the overall objective of the Firm's Equity Award Program is to ensure multi-year alignment with shareholders through significant ownership stakes for employees.

As in prior years, 100% of the 2008 equity award will be in the form of Contingent Stock Awards ("CSAs"). The 3 primary changes to the 2008 program are:

1. **Equity Discount**: Beginning with the 2008 equity award, employees will **no longer be granted CSAs at a discount** from their fair market value at the time of grant. However, CSAs will be subject to a much shorter holding period. See "Holding Period" below.
2. **Conditions**¹: Under the 2008 Equity Award Program, CSAs for all employees will be become subject to both Full and Limited Conditions for the same period, irrespective of corporate title: **33% of CSAs will become subject to Limited Conditions each year over 3 years** (1/3 on November 30, 2009, 1/3 on November 30, 2010, and 1/3 on November 30, 2011, respectively).
3. **Holding Period**: In 2008, the holding period will be reduced from 5 years to **3 years**. This means that 2008 CSAs which become subject to Limited Conditions will convert to shares of Lehman Brothers common stock in 2011, rather than in 2013.

¹ See Glossary of Select Terms for the definition of both "Full Conditions" and "Limited Conditions".

Q2 WHEN WILL I BE GRANTED MY 2008 EQUITY AWARD?

- A2 Eligible employees' 2008 equity award will comprise two separate grants on **two dates**: a) a grant on July 1, 2008 (the "July CSAs") and b) a grant at a date to be determined by Compensation and Benefits Committee of the Board of Directors during the fourth quarter (the "Year-end Award"). You can consider the July award, which is generally 20% of the 2007 award, as an advance on any full-year 2008 award that you may receive. The July CSAs and any Year-end Award will become subject to Limited Conditions and deliver on the same schedule (see below).

This special off-cycle grant underscores our confidence in Lehman Brothers' future and provides each of us with an opportunity to take advantage of the upside potential in our stock price. Further information on the July award is provided in the "July Award" section below.

Q3 HOW WILL 2008 EQUITY AWARD LEVELS COMPARE TO LAST YEAR?

- A3 For 2008, we have simplified the Equity Award Schedule by consolidating the 3 separate schedules (for MDs, SVPs, and employees through the VP level) into one schedule applicable to bonus-eligible employees² regardless of corporate title and based on total compensation levels. In general, for bonus-eligible employees the percentage of 2008 total compensation delivered in equity awards will **increase** from 2007, with the maximum percentage increasing from 50% to 65%; for employees earning \$100,000 or less in total compensation, however, the percentages are about the same as in 2007.

See Exhibit A for the 2007 Equity Award Schedule and Exhibit B for the 2008 Equity Award Schedule for bonus-eligible employees.

Note that for production-based³ and certain other employees, the schedule will be as previously communicated. See Exhibit C for the 2008 Equity Award Schedule for production-based employees.

² For purposes of this document, all references to "bonus-eligible" employees refer to employees who are not considered "production-based" (see footnote 3 below) and who would be eligible to receive a year-end 2008 discretionary bonus, assuming continued employment in accordance with the bonus policy. Note that for individuals with written compensation guarantees for 2008, the Equity Award Schedule applicable for the determination of your full-year equity award is the schedule communicated as part of your guarantee.

³ For purposes of the Equity Award Program, "production-based" employees are those employees, like Investment Representatives, who throughout the performance year receive production-based compensation a portion of which is cash (e.g., commissions) and a portion of which represents an accrual toward a year-end equity award. "Production-based" employees typically do not receive any year-end bonus. Employees are classified as "production-based" or "bonus-eligible" in the Firm's discretion. If you have questions about your classification, please contact the Compensation Department or your Human Resources representative.

JULY AWARD

Q4 WHO IS ELIGIBLE FOR A JULY EQUITY AWARD?

- A4 Employees whose employment started on or before July 1, 2008 are generally eligible for a July equity award for 2008, including employees on an approved leave of absence. Certain employees will not receive a July award, including, among others: employees currently in the Firm's formal Analyst Programs (including recently "promoted" Analysts), certain part-time, temporary or seasonal employees, employees on long-term disability, employees who have given notice or have been notified of their termination, certain employees in proprietary trading roles, employees notified that they will not be receiving a July award, and individuals employed by certain subsidiaries. In addition, in the case of production-based employees, anyone with a 2008 equity award accrual from January 2008 through June 2008 is eligible for a July award.

Q5 HOW WAS THE VALUE OF MY JULY EQUITY AWARD CALCULATED?

A5 Bonus-eligible Employees

For most employees (hired on or prior to December 1, 2006), the value of the July CSAs was calculated as 20% of the principal portion⁴ of the 2007 equity award. In other words, the July award is based on 2007 compensation applied to the 2007 Equity Award Schedule in Exhibit A, multiplied by 20%.

If you joined the Firm during fiscal year 2007, the July CSAs were calculated based on your 2007 annual base salary, additional eligible compensation for 2007, and any 2007 paid bonus.

If you joined the Firm during fiscal year 2008, the July CSAs were calculated based on your 2008 annual base salary, additional eligible compensation for 2008, and any 2008 written compensation guarantee.

The use of 2007 compensation for the purposes of calculating the July CSAs does not indicate any right or eligibility for compensation in 2008 (or 2008 compensation at any particular level or range) or to any additional equity award for the 2008 performance year.

Production-based Employees

Your July CSAs have been calculated based upon your **annualized** production payout and other compensation, after all adjustments, for production months December 2007 through May 2008 (relating to pay periods from January through June 2008). See Exhibit D for examples of how the July equity award was determined.

⁴ The principal portion of the 2007 equity award was the amount awarded as part of your 2007 total compensation (before the discount).

Q6 HOW MANY JULY CSAs HAVE I BEEN GRANTED?

- A6 To determine the number of July CSAs you have been granted, simply take the value calculated using the methodology described in Question 5 above and divide it by the grant price of \$20.96, the closing stock price of Lehman Brothers common stock on July 1, 2008.

Example (for a VP hired prior to December 1, 2006):

2007 Total Compensation	Principal Portion of 2007 Award	July Award (@20%)	July Grant Price	Number of July CSAs
\$200,000	\$9,200	\$1,840	\$20.96	87.79

Note that if the calculation results in fewer than three (3) July CSAs, then no July CSAs will be granted.

Q7 WHY IS THE JULY EQUITY AWARD ONLY 20% OF LAST YEAR'S AWARD?

- A7 As in prior years, equity awards are intended as part of an employee's total compensation for the full performance year, and are therefore determined and granted at the time of any year-end bonuses. Because bonus compensation is fully discretionary (unless guaranteed in writing in accordance with Firm policy), the equity portion of total compensation for 2008 cannot be determined at this time. To maintain sufficient flexibility in the determination of pay for 2008—and to minimize the risk that employee cash bonuses are not adversely impacted—the Firm decided that the July award would be based on 20% of the prior year award for most employees. Please bear in mind that a July CSA award does not indicate any right to a discretionary bonus (or any particular amount of discretionary bonus) or to any additional equity award for the 2008 performance year.

Q8 HOW WERE THE GRANT DATE AND GRANT PRICE FOR THE JULY AWARD DETERMINED?

- A8 All equity grants to employees must be authorized and approved by the Compensation and Benefits Committee of the Board of Directors. The July 1 grant date was set by the Committee. The grant price for the July award is the closing market price of Lehman Brothers common stock on the New York Stock Exchange on that date, \$20.96, and is used to determine the number of July CSAs granted to you.

Q9 WHAT WILL HAPPEN TO MY JULY AWARD IF I LEAVE THE FIRM PRIOR TO NOVEMBER 30, 2008?

A9 Bonus-eligible Employees

If your employment with the Firm ceases, for any reason, prior to November 30, 2008, you will forfeit the July CSAs. If you leave the Firm on or after November 30, 2008, your entitlement to any July CSAs, the same as any Year-end Award, will depend on when you leave, the

circumstances under which you leave, and your conduct with respect to the Firm after you leave.

Production-based Employees

Your entitlement to the July award will depend on when you leave the Firm, why you leave, and your conduct with respect to the Firm after you leave.

Refer to the termination provisions on Exhibit E.

YEAR-END AWARD

Q10 WHO IS ELIGIBLE FOR A 2008 YEAR-END EQUITY AWARD?

A10 Employees (both bonus-eligible and production-based employees) whose employment started on or before the 2008 grant date, expected to be determined during the fourth quarter (the "Year-end Grant Date"), including employees on an approved leave of absence, are eligible to receive a year-end equity award for 2008, with the following exceptions: employees in the Firm's formal Analyst Programs, certain temporary, part-time or seasonal employees, employees on long-term disability, employees who have given notice or have been notified of their termination; and individuals employed by certain subsidiaries. Any bonus-eligible employee whose employment terminates prior to the Year-end Grant Date, or who is otherwise not eligible for a year-end bonus, will not be eligible for a year-end equity award. In case of termination of employment of production-based employees or individuals with a written compensation guarantee, any year-end equity awards will be treated in accordance with the relevant plan provisions or terms of the written compensation guarantee.

Q11 HOW WILL MY 2008 YEAR-END EQUITY AWARD BE CALCULATED?

A11 Bonus-eligible Employees

Your Year-end equity award will be calculated based on your 2008 total compensation and the 2008 Equity Award Schedule for bonus-eligible employees shown on Exhibit B, reduced by the grant-date value of any July award. In no event, however, will your full-year award be less than your July Award. Total compensation includes salary earned in fiscal year 2008 plus any bonus and additional eligible compensation for your performance in 2008, whether such amounts are deferred or paid in 2008.

Note that for individuals with written compensation guarantees for 2008, the Equity Award Schedule applicable for the determination of your full-year equity award will be the one communicated as part of your guarantee. In all other respects, your 2008 Equity Award will be governed by the applicable 2008 Equity Award Program plan documents.

Production-based Employees

Your Year-end equity award will be calculated as above, except that it will be based on the 2008 Equity Award Schedule for production-based employees shown on Exhibit C and your actual production and other compensation, after all adjustments, for production months December 2007 through November 2008 (relating to pay periods from January through December 2008), reduced by the grant date value of any July award. In no event, however, will your full-year award be less than your July Award. Refer to Exhibit D for an illustration of how the 2008 Equity Award will be calculated for production-based employees.

Note that the 2009 Equity Award Schedule for production-based employees will be communicated no later than December 31, 2008.

2008 CONDITIONS AND TERMINATION PROVISIONS

Q12 WHEN WILL MY 2008 CSAs BECOME SUBJECT TO LIMITED CONDITIONS?

A12 The 2008 equity award (including any July CSAs) will become subject to Limited Conditions in 1/3 increments on November 30, 2009, 2010 and 2011.

Q13 WHEN WILL MY 2008 CSAs SUBJECT TO LIMITED CONDITIONS CONVERT TO SHARES OF COMMON STOCK?

A13 2008 CSAs subject to Limited Conditions (including any July CSAs) will convert to shares of Lehman Brothers common stock on November 30, 2011.

Q14 WHAT WILL HAPPEN TO MY 2008 CSAs IF I RESIGN FROM THE FIRM?

A14 If you resign, you will forfeit all CSAs that are subject to Full Conditions at the time of your termination, unless you are eligible for Full Career treatment at the time of termination.

	<u>% of Total Equity Award Retained</u>		
	<i>If you resign from the Firm after November 30 of:</i>		
	<u>2009</u>	<u>2010</u>	<u>2011</u>
All Employees	33%	67%	100%

If you resign and your termination is deemed a Full Career termination, you will be entitled to 100% of your 2008 CSAs, and shares of Lehman Brothers common stock will be delivered to you on November 30, 2011, provided you satisfy all delivery conditions in your award agreements, do not engage in Detrimental Activity through November 30, 2011, and do not engage in Competitive Activity through the earlier of: (1) the end of the fiscal quarter 1 year following your termination and (2) November 30, 2011.

For bonus-eligible employees, note that "Full Career" treatment is not applicable for resignations occurring before November 30, 2008. See Exhibit E for termination provisions.

Q15 WHAT WILL HAPPEN TO MY 2008 CSAs IF MY EMPLOYMENT IS TERMINATED?

A15 As in prior years, if your employment with the Firm is terminated involuntarily without Cause, you will generally be eligible to retain your (otherwise forfeited) 2008 CSAs still subject to Full Conditions, provided you sign a Firm-standard release agreement in accordance with Firm policy and provided you do not engage in Detrimental Activity. Your 2008 CSAs will convert to Lehman Brothers common stock and shares will be delivered on November 30, 2011. (If you do not sign a release agreement, you will be eligible to receive only the portion of your award subject to Limited Conditions.)

Note that the above does not apply to terminations occurring before November 30, 2008. Bonus-eligible employees whose employment ends for any reason before November 30, 2008 forfeit any July CSAs and are not entitled to any Year-end Award.

Note also that if you are terminated involuntarily with Cause, you will forfeit all outstanding CSAs. See Exhibit E for termination provisions.

GENERAL INFORMATION

Q16 WHERE CAN I FIND DETAILS REGARDING MY JULY AWARD AND MY OTHER EQUITY AWARDS?

A16 Details of your equity awards can be found on Personal Award Summary of the Equity Award Program section of LehmanLive, which you can access by using keyword equityaward. The number of July CSAs you were awarded, if any, will be available on LehmanLive by July 15, 2008.

Q17 DO ANY OF THE CHANGES TO THE EQUITY AWARD PROGRAM AFFECT AWARDS GRANTED IN PRIOR YEARS?

A17 No. The changes outlined here apply only to awards granted in 2008. These changes will not be retroactive to awards granted in prior years.

Q18 WHOM DO I CONTACT IF I HAVE FURTHER QUESTIONS REGARDING THE EQUITY AWARD PROGRAM?

A18 If you have any questions regarding the Equity Award Program, please contact the Compensation Department in New York at (212) 526-8346 or by e-mail at compensation@lehman.com.

EXHIBIT A: 2007 EQUITY AWARD SCHEDULE

Total Compensation Range	AMOUNT OF TOTAL COMPENSATION ("TC") IN EQUITY-BASED AWARDS		
	<i>Employees Through Vice President Level</i>	<i>Senior Vice Presidents</i>	<i>Managing Directors</i>
\$0 - \$74,999	1.15% of 2007 TC	2.3% of 2007 TC	2.3% of 2007 TC
\$75,000 - \$99,999	2.3% of 2007 TC	2.3% of 2007 TC	2.3% of 2007 TC
\$100,000 - \$199,999	\$2,300 plus 6.9% of 2007 TC over \$100,000	\$2,300 plus 6.9% of 2007 TC over \$100,000	\$2,300 plus 6.9% of 2007 TC over \$100,000
\$200,000 - \$299,999	\$9,200 plus 11.5% of 2007 TC over \$200,000	\$9,200 plus 11.5% of 2007 TC over \$200,000	\$9,200 plus 11.5% of 2007 TC over \$200,000
\$300,000 - \$499,999	\$20,700 plus 17.25% of 2007 TC over \$300,000	\$34,500 plus 18.687% of 2007 TC over \$300,000	\$34,500 plus 18.687% of 2007 TC over \$300,000
\$500,000 - \$749,999	\$55,200 plus 23% of 2007 TC over \$500,000	\$71,875 plus 23% of 2007 TC over \$500,000	\$71,875 plus 23% of 2007 TC over \$500,000
\$750,000 - \$999,999	\$112,700 plus 28.75% of 2007 TC over \$750,000	\$129,375 plus 40.25% of 2007 TC over \$750,000	\$129,375 plus 40.25% of 2007 TC over \$750,000
\$1,000,000 - \$1,499,999	\$192,600 plus 36% of 2007 TC over \$1.0 million	\$240,000 plus 42% of 2007 TC over \$1.0 million	\$240,000 plus 52.8% of 2007 TC over \$1.0 million
\$1,500,000 - \$1,999,999	\$372,600 plus 42% of 2007 TC over \$1.5 million	\$450,000 plus 54% of 2007 TC over \$1.5 million	\$504,000 plus 67.2% of 2007 TC over \$1.5 million
\$2,000,000 - \$2,499,999	\$582,600 plus 48% of 2007 TC over \$2.0 million	\$720,000 plus 66% of 2007 TC over \$2.0 million	\$840,000 plus 72% of 2007 TC over \$2.0 million
\$2,500,000 and up	\$822,600 plus 54% of 2007 TC over \$2.5 million up to a max of 36% of 2007 TC	42% of 2007 TC	\$1,200,000 plus 75% of 2007 TC over \$2.5 million to a max of 50% of 2007 TC

EXHIBIT B: 2008 EQUITY AWARD SCHEDULE FOR BONUS-ELIGIBLE EMPLOYEES

The portion of 2008 total compensation delivered in the form of an equity award for the full year will be calculated according to the schedule below. Any Year-end Award will be determined by subtracting any July CSAs from your full-year award, but in no event will your full-year award be less than your July CSAs.

2008 Total Compensation Range	AMOUNT OF TOTAL COMPENSATION ("TC") IN EQUITY-BASED AWARDS ⁵		MAXIMUM % OF TC IN EQUITY- BASED AWARDS
\$0 - \$74,999	1% of 2008 TC		1%
\$75,000 - \$99,999	2% of 2008 TC		2%
\$100,000 - \$299,999	\$2,000	plus 14% of 2008 TC above \$100,000	10%
\$300,000 - \$499,999	\$30,000	plus 35% of 2008 TC above \$300,000	20%
\$500,000 - \$749,999	\$100,000	plus 35% of 2008 TC above \$500,000	25%
\$750,000 - \$999,999	\$187,500	plus 65% of 2008 TC above \$750,000	35%
\$1,000,000 - \$1,499,999	\$350,000	plus 65% of 2008 TC above \$1,000,000	45%
\$1,500,000 - \$1,999,999	\$675,000	plus 85% of 2008 TC above \$1,500,000	55%
\$2,000,000 - \$2,499,999	\$1,100,000	plus 80% of 2008 TC above \$2,000,000	60%
\$2,500,000 and above	\$1,500,000	plus 90% of 2008 TC above \$2,500,000 up to a maximum of 65% of 2008 TC	65%

⁵ Subject to a 5-share minimum.

EXHIBIT C: 2008 EQUITY AWARD SCHEDULE FOR PRODUCTION-BASED EMPLOYEES

The portion of 2008 total compensation delivered in the form of an equity award for the full year will be calculated according to the schedule below, which is the same as the one previously communicated. Any Year-end Award will be determined by subtracting any July award from your full-year award, but in no event will your full-year award be less than your July CSAs.

2008 EQUITY AWARD SCHEDULE FOR PRODUCTION-BASED EMPLOYEES

AMOUNT OF TOTAL COMPENSATION ("TC") IN EQUITY-BASED AWARDS ⁶			
2008 Total Compensation Range	<i>Employees Through Vice President Level</i>	<i>Senior Vice Presidents</i>	<i>Managing Directors</i>
\$0 - \$74,999	1.15% of 2008 TC	2.3% of 2008 TC	2.3% of 2008 TC
\$75,000 - \$99,999	2.3% of 2008 TC	2.3% of 2008 TC	2.3% of 2008 TC
\$100,000 - \$199,999	\$2,300 plus 6.9% of 2008 TC over \$100,000	\$2,300 plus 6.9% of 2008 TC over \$100,000	\$2,300 plus 6.9% of 2008 TC over \$100,000
\$200,000 - \$299,999	\$9,200 plus 11.5% of 2008 TC over \$200,000	\$9,200 plus 11.5% of 2008 TC over \$200,000	\$9,200 plus 11.5% of 2008 TC over \$200,000
\$300,000 - \$499,999	\$20,700 plus 17.25% of 2008 TC over \$300,000	\$34,500 plus 18.687% of 2008 TC over \$300,000	\$34,500 plus 18.687% of 2008 TC over \$300,000
\$500,000 - \$749,999	\$55,200 plus 23% of 2008 TC over \$500,000	\$71,875 plus 23% of 2008 TC over \$500,000	\$71,875 plus 23% of 2008 TC over \$500,000
\$750,000 - \$999,999	\$112,700 plus 28.75% of 2008 TC over \$750,000	\$129,375 plus 40.25% of 2008 TC over \$750,000	\$129,375 plus 40.25% of 2008 TC over \$750,000
\$1,000,000 - \$1,499,999	\$192,600 plus 36% of 2008 TC over \$1.0 million	\$240,000 plus 42% of 2008 TC over \$1.0 million	\$240,000 plus 52.8% of 2008 TC over \$1.0 million
\$1,500,000 - \$1,999,999	\$372,600 plus 42% of 2008 TC over \$1.5 million	\$450,000 plus 54% of 2008 TC over \$1.5 million	\$504,000 plus 67.2% of 2008 TC over \$1.5 million
\$2,000,000 - \$2,499,999	\$582,600 plus 48% of 2008 TC over \$2.0 million	\$720,000 plus 66% of 2008 TC over \$2.0 million	\$840,000 plus 72% of 2008 TC over \$2.0 million
\$2,500,000 and up	\$822,600 plus 54% of 2008 TC over \$2.5 million up to a max of 36% of 2008 TC	42% of 2008 TC	\$1,200,000 plus 75% of 2008 TC over \$2.5 million to a max of 50% of 2008 TC

⁶ Subject to a 5-share minimum.

EXHIBIT D: 2008 EQUITY AWARD CALCULATION FOR PRODUCTION-BASED EMPLOYEES

Your 2008 equity award will be calculated based on your 2008 production compensation and the 2008 Equity Award Schedule shown in Exhibit C, less the portion of compensation granted as July CSAs, if any. The examples below assume an individual with production compensation for the full year 2008.

Actual 2008 Production Compensation (through May production month):	\$125,000
Annualized 2008 Production Compensation (x 12 ÷ 6):	\$250,000
Annualized Equity Award (from Schedule for employees through VP level):	\$14,950
July Award (20% of Annualized Award):	\$2,990
Assumed 2008 Production Compensation:	\$250,000
Total 2008 Equity Award:	\$14,950
July Award:	\$2,990
2008 Year-End Equity Award:	<u>\$11,960</u>
Total 2008 Equity Award:	\$14,950

EXHIBIT E: TERMINATION PROVISIONS

	All Employees
Voluntary Termination <i>(but not Full Career)</i>	<p>Participants will forfeit July CSAs and Year-end CSAs still subject to Full Conditions (together, "2008 CSAs"). Any 2008 CSAs subject to Limited Conditions will convert to shares of common stock and such shares will be delivered as soon as practicable after November 30, 2011 (the "Share Payment Date") but not later than December 31, 2011, provided the participant does not engage in Detrimental Activity through that date and has not committed an act constituting Cause through the termination date.</p>
Involuntary Termination <i>(but not Full Career)</i>	<p>Involuntary Termination without Cause: Participants will become entitled to 100% of their 2008 CSAs, including the portion subject to Full Conditions (provided the employee signs a Firm-standard release agreement). Shares will be delivered as soon as practicable after the Share Payment Date, but not later than December 31, 2011, provided the participant does not engage in Detrimental Activity through that date.</p> <p>Involuntary Termination with Cause: Participants will forfeit 100% of their 2008 CSAs.</p>
Full Career Termination	<p>Voluntary Termination: Participants will become entitled to 100% of their 2008 CSAs on the Share Payment Date, provided they do not engage in Competitive Activity through the end of the fiscal quarter following the one year anniversary of the termination date, and do not engage in Detrimental Activity through the Share Payment Date or commit an act constituting Cause through the termination date. 2008 CSAs will convert to shares of common stock, and such shares will be delivered as soon as practicable following the Share Payment Date, but not later than December 31, 2011.</p> <p>Involuntary Termination without Cause: Participants will become entitled to 100% of their 2008 CSAs on the Share Payment Date, provided they do not engage in Detrimental Activity through that date or commit an act constituting Cause prior to the termination date. 2008 CSAs will convert to shares of common stock, and such shares will be delivered as soon as practicable after the Share Payment Date but not later than December 31, 2011.</p> <p>Involuntary Termination with Cause: Participants will forfeit 100% of their 2008 CSAs.</p>
Termination due to Death or Disability	<p>All Conditions on 2008 CSAs will lapse, and shares will be delivered 30 days following the termination date.</p>

NOTE: Notwithstanding the above, bonus-eligible employees whose employment ends for any reason (voluntary or involuntary termination) prior to November 30, 2008 will forfeit all July CSAs. In such cases, "Full Career" treatment does not apply.

EXHIBIT F: GLOSSARY OF SELECT TERMS

"Appropriate Officer" means the Chief Executive Officer or Chief Operating Officer of Holdings (or their respective designees).

"Cause" means a material breach by a person of an employment contract between the person and Holdings or any subsidiary, failure by a person to devote substantially all business time exclusively to the performance of his or her duties for Holdings or any subsidiary, willful misconduct, dishonesty related to the business and affairs of Holdings or any subsidiary, conviction of a felony or a misdemeanor constituting a statutory disqualification under U.S. securities laws (or failure to contest prosecution for a felony or such a misdemeanor), habitual or gross negligence in the performance of a person's duties, solicitation of employees of Holdings or any subsidiary to work at another company, improper use or disclosure of confidential information, the violation of policies and practices adopted by Holdings or any subsidiary including, but not limited to the Code of Conduct, or a material violation of the conflict of interest, proprietary information or business ethics policies of Holdings or any subsidiary, or such other circumstances as may be determined in the sole discretion of an Appropriate Officer. For avoidance of doubt, for purposes of the preceding sentence, a material breach of an employment contract or violation of policies would include, as applicable, the employee's violation of any policy or employment agreement relating to the obligation to provide advance notice of resignation from Holdings or any subsidiary.

"Competitive Activity" means involvement (whether as employee, proprietor, consultant or otherwise) with any person or entity (including any company and its affiliates) engaged in any business activity which is materially competitive with any business carried on by Holdings or any of its subsidiaries or affiliates on the date of termination of a person's employment with Holdings and any of its subsidiaries, as determined in the sole discretion of an Appropriate Officer.

"Contingent Stock Awards (CSAs)" A CSA represents the conditional right to receive one share of Lehman Brothers common stock three years after the grant date, on November 30, 2011. Generally, CSAs cannot be sold, traded, pledged or transferred for that three-year period.

"Detrimental Activity" means (i) using information received during a person's employment with Holdings or any of its subsidiaries related to the business affairs of Holdings or any of its subsidiaries, affiliates or their clients, in breach of such person's undertaking to keep such information confidential; (ii) directly or indirectly persuading or attempting to persuade, by any means, any employee of Holdings or any of its subsidiaries or affiliates to terminate employment with any of the foregoing or to breach any of the terms of his or her employment with the foregoing; (iii) directly or indirectly making any statement that is, or could be, disparaging of Holdings, its subsidiaries or affiliates, or any of their employees (except as necessary to respond truthfully to any inquiry from applicable regulatory authorities or to provide information pursuant to legal process); (iv) violating policies and practices adopted by Holdings or any subsidiary; (v) materially breaching any contract between the person and Holdings or any subsidiary; or (vi) directly or indirectly engaging in any activity that is, or could be, substantially injurious to the financial condition, reputation, or goodwill of Holdings or its subsidiaries or affiliates, in each case as determined in the sole discretion of the Chief Executive Officer or Chief Operating Officer of Holdings (or their respective designees). Notwithstanding the foregoing, if following any termination of employment other than for Cause but prior to the scheduled Share Payment Date it is determined that an act constituting Cause has occurred which was not determined by Holdings (or its designee) at the time of such termination, such act shall also be deemed to constitute Detrimental Activity.

"Disability" means a disability under both the Lehman Brothers Long-Term Disability Insurance Plan and the Social Security Act.

"Full Career Termination" means a Termination of employment with Holdings or any subsidiary when (a) a person has at least 20 years of service; (b) the person is at least 45 years old, and the person has at least 10 years of service with Holdings or any subsidiary; or (c) the person is at least 50 years old, and the person has at least 5 years of service with Holdings or any subsidiary.

CSAs which are subject to **"Full Conditions"** are forfeited if the award recipient's employment with the Firm terminates or if the award recipient engages in Detrimental Activity.

CSAs which are subject to **"Limited Conditions"** are forfeited if the award recipient engages in Detrimental Activity.

"Termination" means the end of employment with Holdings or a subsidiary. The characterization of the circumstances of Termination is determined in the sole discretion of an Appropriate Officer.

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EXHIBIT 16

Lehman Brothers
2005 Total Compensation Statement

CONFIDENTIAL

Employee : REDACTED
Division : Mortgage Capital Division(LBB)
Hire Date : September 6, 1988

Stock Program : SVP
Employee Id : REDACTED

COMPENSATION

<u>Compensation Type</u>	<u>Current - 2005</u>
Paid Salary	\$200,000
Bonus	\$900,000
TOTAL COMPENSATION	\$1,100,000

EQUITY SUMMARY in USD

	<u>Equity Component</u>	<u>Market Price</u>	<u>Discount Price</u>	<u>Shares</u>
RSUs	\$235,000.02	\$126.00	\$94.50	2,486.77

Your equity award was calculated based on total compensation of \$1,100,000, where "total compensation" includes salary, bonus, and other forms of eligible compensation.

All terms and conditions of equity awards, including those relating to vesting and forfeiture, are subject to controlling plan documents, including the FY 2005 equity award agreements (expected to be finalized in early 2006), the Employee Incentive Plan and related Prospectus.

PAYMENT SCHEDULE

Bonus	\$900,000
Less RSUs	(\$235,000)
Total Cash Payment (Before Taxes)	\$665,000

Payable on or about January 31, 2006

ANNUAL SALARY

Effective Fiscal Year 2006, your annual base salary will be as follows:

Current Annual Salary	\$200,000
-----------------------	-----------

Note: All bonus awards and equity awards are contingent on your being employed on the scheduled bonus award date (on or about January 31, 2006) and not having given or received notice of employment termination before that date.

If you are not employed on January 31, 2006, or you have received notice of employment termination before that date, you will not be eligible to receive a bonus award (including any special awards) or any equity award for fiscal year 2005.

If you have any additional questions regarding your compensation or personal data, please contact your divisional HR representative. If you have any questions regarding your equity award, please contact the Compensation Department at (212)526-8346.

12-Dec-05

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EXHIBIT 17

PRIVATE AND CONFIDENTIAL
2006 TOTAL COMPENSATION STATEMENT

TO: REDACTED
DEPT: CORP : 49143 - Real Estate-Europe/56
FROM: P Hohnsbeen
OATE: December 13 2006

Please find below the details of your 2006 Total Compensation and any year-end awards:

Total Compensation Summary

	GBP
Paid Salary	100,000
Total Bonus	134,600
Total Compensation	234,600
Total Bonus	134,600
Total Equity Award	31,953
Net Bonus Award	102,647

Equity Award Detail

Equity Type	USD Award Value	USD Mkt Price	USD Grant Price	No. of Units
CSAs	57,960	77.03	57.77	1,003.28
Total Equity Award	57,960			

Your total CSA Award is based on a Total Compensation of USD 425,540 (for the purposes of calculating the CSA Award ONLY).

When awarding the CSA award the Firm has applied a discount of 25% to the market price of \$ 77.03. CSAs are subject to restrictions until 30 November 2011; they cannot be sold, traded or pledged before then.

A full summary of all your outstanding CSA Awards (including your 2006 Award) will be available on LehmanLive, keyword "equityaward", during the first quarter of 2007. All terms and conditions of the CSA Awards are subject to the controlling plan documents.

Base Salary

Your base salary has increased to GBP 110,000 with effect from 1 December 2006.

Additional Information

All terms and conditions of your employment remain unchanged.

Entitlement to your 2006 Awards are contingent on you being employed by Lehman Brothers at, and not under notice either given or received prior to, 31 January 2007.

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EXHIBIT 18

Compensation Statement

Find: ☒ GSID ☐ 10142380
Fiscal year: 2008 ☐ Show as of before EOM

Sales Org:

REDACTED												
Name: REDACTED												
From: 12/1/2007 To: 12/31/2008												
Future payout trades												
Year Total	12/2008	11/2008	10/2008	9/2008	8/2008	7/2008	6/2008	5/2008	4/2008	3/2008	2/2008	1
Gross Production	1,176,967.86	1,176,967.86	1,176,967.86	1,176,967.86	1,176,967.86	1,176,967.86	1,176,967.86	1,176,967.86	1,176,967.86	1,176,967.86	1,176,967.86	1,176,967.86
Net Production	403,316.44	403,316.44	403,316.44	403,316.44	403,316.44	403,316.44	403,316.44	403,316.44	403,316.44	403,316.44	403,316.44	403,316.44
Ratio Net Production	3.31368	3.31368	3.31368	3.31368	3.31368	3.31368	3.31368	3.31368	3.31368	3.31368	3.31368	3.31368
Average Rate (%)	34.27	34.27	34.27	34.27	34.27	34.27	34.27	34.27	34.27	34.27	34.27	34.27
Prod Month's Deficit/Overage	-40,292.67	-40,292.67	-40,292.67	-40,292.67	-40,292.67	-40,292.67	-40,292.67	-40,292.67	-40,292.67	-40,292.67	-40,292.67	-40,292.67
Adj to Net Production	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Monthly Payout Balance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Draw Amount	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Sales Compensation	395,535.82	395,535.82	395,535.82	395,535.82	395,535.82	395,535.82	395,535.82	395,535.82	395,535.82	395,535.82	395,535.82	395,535.82
Cash Commissions	306,880.05	306,880.05	306,880.05	306,880.05	306,880.05	306,880.05	306,880.05	306,880.05	306,880.05	306,880.05	306,880.05	306,880.05
Equity Account Calculated	50,836.80	50,836.80	50,836.80	50,836.80	50,836.80	50,836.80	50,836.80	50,836.80	50,836.80	50,836.80	50,836.80	50,836.80
Recorded Total Sales Compensation	357,518.85	357,518.85	357,518.85	357,518.85	357,518.85	357,518.85	357,518.85	357,518.85	357,518.85	357,518.85	357,518.85	357,518.85
Deficit/Overage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

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EXHIBIT 19

Compensation Statement

REDACTED

Name: From: 12/1/2007 To: 11/30/08

Year Total	Sep-08	Aug-08	Jul-08	Jun-08	May-08	Apr-08	Mar-08	Feb-08	Jan-08	Dec-07
4,763,621.17	285,865.39	663,862.12	832,710.87	591,868.46	575,650.57	404,012.31	266,370.86	302,636.22	510,652.33	320,461.34
1,248,536.89	55,967.96	168,116.57	208,650.63	159,067.45	181,772.60	119,110.70	60,178.27	80,842.96	122,130.20	90,477.55
81.06	0	0	0	0	0	50.93	0	0	30.13	0
26.17	21.07	24.24	25.08	28.89	31.58	29.49	22.59	26.71	23.92	28.23
	-65,582.50	0	0	0.01	0	0	-0.01	0	0	0
-210,969.30	0	-47,875.97	-58,707.63	-39,759.62	-21,332.78	-10,497.73	-7,504.93	-6,717.96	-10,136.90	-8,483.96
	405.46	120,242.60	150,143.00	119,327.84	160,439.82	108,663.90	52,674.23	74,125.00	112,020.73	82,013.57
0	0	0	0	0	0	0	0	0	0	0
1,566.21	1,566.21	0	0	0	0	0	0	0	0	0
981,822.37	1,971.67	120,242.60	150,143.00	119,327.84	160,439.82	108,663.90	52,674.23	74,125.00	112,020.73	82,013.57
703,197.40	0	84,740.71	102,062.94	84,210.18	108,055.08	74,910.47	46,663.64	57,992.51	76,181.78	63,378.11
276,463.29	0	35,591.86	46,090.06	35,117.69	62,394.72	33,763.43	4,006.58	16,132.50	32,858.56	18,635.46
1,036,233.19	0	175,823.10	150,143.00	119,327.84	160,439.81	108,663.90	52,674.23	74,125.01	112,020.73	82,013.57
	-1,566.21	-55,582.60	0	0	0.01	0	0	-0.01	0	0

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EXHIBIT 20

From: Gross, Mark D <mgross@lehman.com>
Sent: Wednesday, April 14, 2004 9:07 AM
To: Emmert, James R <jemmert@lehman.com>
Subject: FW: Based on your most excellent feedback, Ian has made some changes to the document
Attach: Stock Awards Overview 0413a.ppt

"final" version

> -----Original Message-----

> From: Gross, Mark D
> Sent: Tuesday, April 13, 2004 2:15 PM
> To: Collerton, Anthony J; Tuininga, Chris; Arreglado, Elizabeth R;
> Wegrzyn, Boguslaw
> Subject: FW: Based on your most excellent feedback, Ian has made
> some changes to the document

>

>

>

> -----Original Message-----

> From: James, Mimi
> Sent: Tuesday, April 13, 2004 12:28 PM
> To: Binkley, Tracy A
> Cc: Gross, Mark D
> Subject: Based on your most excellent feedback, Ian has made some
> changes to the document

>

> <<Stock Awards Overview 0413a.ppt>>

> New Page 3 (can you make sure we are saying this right?)
> Page 7 - Options Overhang (last sentence - again could you check that
> this is correct?)
> Page 15 & 16- Potential levers - added # 6 & 7 to lever list and to
> impact list
> Next Steps page - we added "even for the EC" to no option grants
>

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EXHIBIT 21

Equity Award Value To Employees

The amortization of awards over time lowers our comp and benefits ratio. If we were to fully expense all awards in the year of grant (including options), our comp ratio would be over 57% over the period.

	2000	2001	2002	2003
Revenues	\$7,707	\$6,737	\$6,155	\$8,647
<i>Comp Accrual/revenues</i>	51.0%	51.0%	51.0%	49.9%
Comp & Benefits Accrual - Reported comp	\$3,931	\$3,436	\$3,139	\$4,318
RSU amortization	(478)	(477)	(522)	(560)
PSU amortization	(43.9)	(27.3)	(19.0)	(28.0)
C&B expense bef amortization of equity awards	3,409	2,931	2,598	3,731
RSU grant value (principal + discount)	886	601	390	790
Options Black Scholes value	249	291	500	333
PSU grant value	48.7	53.1	23.1	54.4
Comp value to employees	4,592	3,877	3,511	4,908
<i>Comp ratio</i>	59.6%	57.5%	57.0%	56.8%

Exhibit B

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 08-13555-jmp

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In the Matters of:

LEHMAN BROTHERS HOLDINGS INC., et al.,

Debtors.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

December 21, 2011
10:04 AM

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

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2 Hearing re: 1. Debtors' Objection to the Claim of Wilmington
3 Trust Company as Indenture Trustee (Claim No. 10082) [ECF No.
4 20510]

5

6 Hearing re: 2. Debtors' One Hundred Thirty-Sixth Omnibus
7 Objection to Claims (Misclassified Claims) [ECF No. 16867]

8

9 Hearing re: 3. Debtors' Motion for Authorization to Implement
10 the Defense Costs Fund [ECF No. 22647]

11

12 Hearing re: 4. Application of the Debtors for Authorization to
13 Employ and Retain Gleacher & Company Securities, Inc. as
14 Financial Advisor Effective as of February 17, 2011 [ECF No.
15 22520]

16

17 Hearing re: 5. Archstone LB Syndication Partner LLC, et al. v.
18 Banc of America Strategic Ventures, Inc. et al. [Adversary Case
19 No. 11-02928] (Hearing on separate transcript)

20

21 Hearing re: 6. Motion for Sanctions [ECF No. 22817]

22

23 Hearing re: 7. Debtors' Seventy-Third Omnibus Objection to
24 Claims (To Reclassify Proofs of Claim as Equity Interests) [ECF
25 No. 13295]

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Hearing re: 8. Debtors' One Hundred Eighteenth Omnibus
Objection to Claims (To Reclassify Proofs of Claim as Equity
Interests) [ECF No. 15666]

Hearing re: 9. Debtors' One Hundred Thirtieth Omnibus
Objection to Claims (To Reclassify Proofs of Claim as an Equity
Interest) [ECF No. 16115]

Hearing re: 10. Debtors' One Hundred Thirty-First Omnibus
Objection to Claims (To Reclassify Proofs of Claim as an Equity
Interest) [ECF No. 16116]

Hearing re: 11. Debtors' One Hundred Thirty-Third Omnibus
Objection to Claims (To Reclassify Proofs of Claim as an Equity
Interest) [ECF No. 16530]

Hearing re: 12. Debtors' One Hundred Thirty-Fourth Omnibus
Objection to Claims (To Reclassify Proofs of Claim as an Equity
Interest) [ECF No. 16532]

Hearing re: 13. Debtors' One Hundred Thirty-Fifth Omnibus
Objection to Claims (To Reclassify Proofs of Claim as an Equity
Interest) [ECF No. 16808]

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2 Hearing re: 14. Debtors' One Hundred Seventy-Sixth Omnibus
3 Objection to Claims (To Reclassify Proofs of Claim as Equity
4 Interests) [ECF No. 19392]

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6 Hearing re: 15. Debtors' Two Hundred Seventh Omnibus Objection
7 to Claims (To Reclassify Proofs of Claim as Equity Interests)
8 [ECF No. 21083]

9

10 Hearing re: 16. Debtors' Twenty-Eighth Omnibus Objection to
11 Claims (Valued Derivative Claims) [ECF No. 9983]

12

13 Hearing re: 17. Debtors' Thirty-Fifth Omnibus Objection to
14 Claims (Valued Derivative Claims) [ECF No. 11260]

15

16 Hearing re: 18. Debtors' Fortieth Omnibus Objection to Claims
17 (Late-Filed Claims) [ECF No. 11305]

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19 Hearing re: 19. Debtors' Forty-First Omnibus Objection to
20 Claims (Late-Filed Claims) [ECF No. 11306]

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22 Hearing re: 20. Debtors' Forty-Second Omnibus Objection to
23 Claims (Late-Filed Lehman Programs Securities Claims) [ECF No.
24 11307]

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Hearing re: 21. Debtors' Forty-Third Omnibus Objection to
Claims (Late-Filed Lehman Programs Securities Claims) [ECF No.
11308]

Hearing re: 22. Debtors' Sixty-Third Omnibus Objection to
Claims (Valued Derivative Claims) [ECF No. 11978]

Hearing re: 23. Debtors' Sixty-Seventh Omnibus Objection to
Claims (Valued Derivative Claims) [ECF No. 12533]

Hearing re: 24. Debtors' Seventy-First Omnibus Objection to
Claims (Valued Derivative Claims) [ECF No. 13230]

Hearing re: 25. Debtors' Eighty-Fourth Omnibus Objection to
Claims (Valued Derivative Claims) [ECF No. 13955]

Hearing re: 26. Debtors' Eighty-Sixth Omnibus Objection to
Claims (No Liability Claims) [ECF No. 14440]

Hearing re: 27. Debtors' Eighty-Seventh Omnibus Objection to
Claims (No Liability Claims) [ECF No. 14442]

Hearing re: 28. Debtors' Eighty-Eighth Omnibus Objection to
Claims (No Liability Claims) [ECF No. 14450]

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Hearing re: 29. Debtors' Eighty-Ninth Omnibus Objection to
Claims (No Liability Claims) [ECF No. 14452]

Hearing re: 30. Debtors' Ninetieth Omnibus Objection to Claims
(No Liability Claims) [ECF No. 14453]

Hearing re: 31. Debtors' Ninety-Second Omnibus Objection to
Claims (No Blocking Number LPS Claims) [ECF No. 14472]

Hearing re: 32. Debtors' Ninety-Fifth Omnibus Objection to
Claims (Valued Derivative Claims) [ECF No. 14490]

Hearing re: 33. Debtors' Ninety-Sixth Omnibus Objection to
Claims (Duplicative LPS Claims) [ECF No. 14491]

Hearing re: 34. Debtors' One Hundred Third Omnibus Objection
to Claims (Valued Derivative Claims) [ECF No. 15003]

Hearing re: 35. Debtors' One Hundred Tenth Omnibus Objection
to Claims (Pension Claims) [ECF No. 15010]

Hearing re: 36. Debtors' One Hundred Eleventh Omnibus
Objection to Claims (No Liability Claims) [ECF No. 15012]

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2 Hearing re: 37. Debtors' One Hundred Twelfth Omnibus Objection
3 to Claims (Invalid Blocking Number LPS Claims) [ECF No. 15014]

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5 Hearing re: 38. Debtors' One Hundred Seventeenth Omnibus
6 Objection to Claims (No Liability Non-Debtor Employee Claims)
7 [ECF No. 15363]

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9 Hearing re: 39. Debtors' One Hundred Twentieth Omnibus
10 Objection to Claims (No Blocking Number LPS Claims) [ECF No.
11 16074]

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13 Hearing re: 40. Debtors' One Hundred Twenty-First Omnibus
14 Objection to Claims (To Reclassify Proofs of Claim as an Equity
15 Interest) [ECF No. 16075]

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17 Hearing re: 41. Debtors' One Hundred Twenty-Second Omnibus
18 Objection to Claims (No Liability Claims) [ECF No. 16046]

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20 Hearing re: 42. Debtors' One Hundred Twenty-Ninth Omnibus
21 Objection to Claims (No Liability Derivatives Claims) [ECF No.
22 16114]

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24 Hearing re: 43. Debtors' One Hundred Thirty-Seventh Omnibus
25 Objection to Claims (Valued Derivative Claims) [ECF No. 16860]

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Hearing re: 44. Debtors' One Hundred Thirty-Eighth Omnibus
Objection to Claims (No Liability Derivatives Claims) [ECF No.
16865]

Hearing re: 45. Debtors' One Hundred Fortieth Omnibus
Objection to Claims (Duplicative of Indenture Trustee Claims)
[ECF No. 16853]

Hearing re: 46. Debtors' One Hundred Forty-Third Omnibus
Objection to Claims (Late-Filed Claims) [ECF No. 16856]

Hearing re: 47. Debtors' One Hundred Fifty-First Omnibus
Objection to Claims (No Liability Claims) [ECF No. 17478]

Hearing re: 48. Debtors' One Hundred Fifty-Fifth Omnibus
Objection to Claims (Valued Derivative Claims) [ECF No. 17468]

Hearing re: 49. Debtors' One Hundred Fifty-Sixth Omnibus
Objection to Claims (No Liability Derivatives Claims) [ECF No.
17469]

Hearing re: 50. Debtors' One Hundred Fifty-Eighth Omnibus
Objection to Claims (Late-Filed Claims) [ECF No. 18399]

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2 Hearing re: 51. Debtors' One Hundred Fifty-Ninth Omnibus
3 Objection to Claims (Invalid Blocking Number LPS Claims) [ECF
4 No. 18407]

5

6 Hearing re: 52. Debtors' One Hundred Sixtieth Omnibus
7 Objection to Claims (Settled Derivatives Claims) [ECF No.
8 18444]

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10 Hearing re: 53. Debtors' One Hundred Sixty-Second Omnibus
11 Objection to Claims (Valued Derivative Claims) [ECF No. 18405]

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13 Hearing re: 54. Debtors' One Hundred Seventy-Third Omnibus
14 Objection to Claims (No Liability Employee Claims) [ECF No.
15 19399]

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17 Hearing re: 55. Debtors' One Hundred Seventy-Fourth Omnibus
18 Objection to Claims (To Reclassify Proofs of Claim as Equity
19 Interests) [ECF No. 19390]

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21 Hearing re: 56. Debtors' One Hundred Seventy-Fifth Omnibus
22 Objection to Claims (No Liability Pension Claims) [ECF No.
23 19391]

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2 Hearing re: 57. Debtors' One Hundred Seventy-Seventh Omnibus
3 Objection to Claims (No Liability Non-Debtor Employee Claims)
4 [ECF No. 19393]

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6 Hearing re: 58. Debtors' One Hundred Seventy-Eighth Omnibus
7 Objection to Claims (Misclassified Claims) [ECF No. 19377]

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9 Hearing re: 59. Debtors' One Hundred Seventy-Ninth Omnibus
10 Objection to Claims (No Liability Derivatives Claims) [ECF No.
11 19378]

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13 Hearing re: 60. Debtors' One Hundred Eightieth Omnibus
14 Objection to Claims (Invalid Blocking Number LPS Claims) [ECF
15 No. 19396]

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17 Hearing re: 61. Debtors' One Hundred Eighty-Second Omnibus
18 Objection to Claims (Valued Derivative Claims) [ECF No. 19398]

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20 Hearing re: 62. Debtors' One Hundred Eighty-Fifth Omnibus
21 Objection to Claims (Compound Claims) [ECF No. 19714]

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23 Hearing re: 63. Debtors' One Hundred Eighty-Sixth Omnibus
24 Objection to Claims (Misclassified Claims) [ECF No. 19816]

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2 Hearing re: 64. Debtors' One Hundred Eighty-Seventh Omnibus
3 Objection to Claims (Misclassified Claims) [ECF No. 19817]

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5 Hearing re: 65. Debtors' One Hundred Eighty-Eighth Omnibus
6 Objection to Claims (Duplicative LPS Claims) [ECF No. 19871]

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8 Hearing re: 66. Debtors' One Hundred Eighty-Ninth Omnibus
9 Objection to Claims (No Liability Repo Claims) [ECF No. 19870]

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11 Hearing re: 67. Debtors' One Hundred Ninetieth Omnibus
12 Objection to Claims (No Liability Security Claims) [ECF No.
13 19873]

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15 Hearing re: 68. Debtors' One Hundred Ninety-First Omnibus
16 Objection to Claims (Valued Derivative Claims) [ECF No. 19888]

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18 Hearing re: 69. Debtors' One Hundred Ninety-Second Omnibus
19 Objection to Claims (Partially Settled Guarantee Claims) [ECF
20 No. 19875]

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22 Hearing re: 70. Debtors' One Hundred Ninety-Eighth Omnibus
23 Objection to Claims (Late-Filed Claims) [ECF No. 19902]

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Hearing re: 71. Debtors' One Hundred Ninety-Ninth Omnibus
Objection to Claims (No Liability Claims) [ECF No. 19903]

Hearing re: 72. Debtors' Two Hundredth Omnibus Objection to
Claims (No Liability Claims) [ECF No. 19921]

Hearing re: 73. Debtors' Two Hundred Fifth Omnibus Objection
to Claims (Insufficient Documentation Claims) [ECF No. 19936]

Hearing re: 74. Debtors' Two Hundred Ninth Omnibus Objection
to Portions of Claim Nos. 29883 and 29879 Filed by Citibank,
N.A. and Citigroup Global Markets, Inc. [ECF No. 20030]

Hearing re: 75. Debtors' Two Hundred Nineteenth Omnibus
Objection to Claims (Valued Derivative Claims) [ECF No. 20787]

Hearing re: 76. Debtors' Two Hundred Twenty-First Omnibus
Objection to Claims (Duplicative of Indenture Trustee Claims)
[ECF No. 20860]

Hearing re: 77. Debtors' Two Hundred Twenty-Fourth Omnibus
Objection to Claims (Late-Filed Claims) [ECF No. 20864]

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2 Hearing re: 78. Debtors' Two Hundred Twenty-Eighth Omnibus
3 Objection to Claims (No Liability Derivatives Claims) [ECF No.
4 20886]

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6 Hearing re: 79. Debtors' Two Hundred Thirty-Second Omnibus
7 Objection to Claims (Valued Derivative Claims) [ECF No. 21727]

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9 Hearing re: 80. Debtors' Objection to Proof of Claim No. 66099
10 Filed by Syncora Guarantee, Inc. [ECF No. 20087]

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12 Hearing re: 81. Debtors' Objection to Proof of Claim Number
13 29702 [ECF No. 20100]

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15 Hearing re: 82. Cathay United Bank's Response in Opposition to
16 Debtors' Fortieth Omnibus Objection to Claims (Late-Filed
17 Claims) as to Claim No. 35181 and Motion to Have Claim No.
18 35181 Deemed Timely Filed [ECF No. 12037]

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20 Hearing re: 83. Motion of Pearl Assurance Limited to Deem
21 Proofs of Claim to Be Timely Filed [ECF No. 12072]

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23 Hearing re: 84. Motion of Pictet & Cie and Bank Julius Baer &
24 Co. Ltd. to Enlarge the Time Period for the Filing of Claim
25 Number 64249 By One Day [ECF No. 21979]

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Hearing re: 85. Motion of Robert Franz Pursuant to Fed. R.
Bankr. P. 9024 Incorporating By Reference Fed. R. Civ. P.
60(b), and Section 105(a) of the Bankruptcy Code for
Reconsideration and Reinstatement of Proof of Claim [ECF No.
22665]

Hearing re: 86. Motion of Caisse Des Dépôts Et Consignations
to Permit a Late-Filed Claim Against Lehman Brothers Special
Financing Inc. [ECF No. 18039]

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P R O C E E D I N G S

THE COURT: Be seated. Good morning.

MR. BERNSTEIN: Good morning, Your Honor. Mark

Bernstein from Weil, Gotshal & Manges on behalf of Lehman
Brothers Holdings Inc. and its affiliated Chapter 11 debtors.
We're here today for what was initially scheduled as a claims
hearing, but, as you can tell from the crowd, there's a few
other matters on. It turned into a little bit more than just
that.

However, the first two items on the agenda are
uncontested claims matters which I'll be handling and then turn
the podium over to some of my colleagues. The first item on
the agenda is the debtors' objection to reduce and allow the
claim of Wilmington Trust Company, which was initially heard at
the November 30th claims hearing. The order was granted with
respect to the nonstructured securities claims, and Your Honor
had asked for additional information and a declaration be filed
related to the structured securities claims and the notice that
had been provided to the holders regarding the injunction that
Wilmington had requested be included in the order.

Wilmington did file a declaration including that
notice, which specifically notified the holders of that
requested protection. Wilmington's counsel is here today if
Your Honor has any further questions on that matter. If not we
respectfully request that be granted on an uncontested basis.

1 THE COURT: It will be granted on an uncontested
2 basis. I've reviewed the declaration of Julie Becker and it
3 satisfies all of my questions from November 30.

4 MR. BERNSTEIN: Thank you, Your Honor. The second
5 item on the agenda is a carryover item from a prior hearing as
6 well. This is to the debtors' one hundred thirty-sixth omnibus
7 objection, which seeks to reclassify certain claims that were
8 filed as secured as unsecured. These claims generally were
9 filed as secured in order for the parties to reserve their
10 rights of setoff that they might have in the future. We're
11 going forward today with respect to two claims, one the claim
12 of Xanadu Holdings, for which we had extended the objection
13 deadline. That party has not filed their response. Their
14 deadline has expired. And the claim of Olivant Investments
15 Switzerland, who did file a response to the objection.
16 However, their response merely reserves their right to assert
17 that any property is not property of the estate. They're not
18 objecting to the reclassification of their claim as unsecured,
19 and, as a result, we're seeking to go forward on an uncontested
20 basis and have those two claims reclassified as unsecured and
21 respectfully request Your Honor grant that.

22 THE COURT: I think counsel wishes to comment.

23 MR. SHAMAH: Your Honor, Daniel Shamah on behalf of
24 Olivant Investments Switzerland SA. I just wanted to note my
25 appearance. We did file a reservation of rights. It's not on

1 the agenda, but counsel's description of that reservation is
2 accurate and we do not have any opposition to the relief
3 requested.

4 THE COURT: Fine. That is granted on an uncontested
5 basis.

6 MR. BERNSTEIN: Thank you, Your Honor. At this point
7 I will cede the podium to Mr. Krasnow to handle the next item.

8 MR. KRASNOW: Good morning, Your Honor. Richard
9 Krasnow, Weil, Gotshal & Manges, on behalf of the debtors.
10 Your Honor, the next item on the agenda is item number 3, which
11 is the debtors' motion for authorization to implement the
12 Defense Costs Fund that appears on docket number 22647. Your
13 Honor, pursuant to this motion the debtors seek authority to
14 use up to, but no more than, two million dollars to provide
15 funding to current directors and one current employee of LAMCO
16 with respect to defense costs that they might incur in
17 connection with pending actions that relate to pre-petition
18 acts as to which, while the debtors are not named in those
19 proceedings, claims have been asserted against the debtors in
20 proofs of claim, either by the plaintiffs or by the defendants
21 in indemnity claims in amounts which -- asserted amounts which
22 are in the hundreds of millions of dollars.

23 Your Honor, the debtors have set forth, both in the
24 motion and in a reply to an objection, the only objection that
25 was filed to the motion, an objection filed by the creditors'

1 committee as to the business reasons why they believe the
2 establishment of this fund, and it's not a fund, per se, we're
3 just making two million dollars available, is warranted. In
4 respect of that objection, Your Honor, subsequent to the filing
5 of the objection we engaged in discussions with the creditors'
6 committee and facilitated a resolution of the committee's
7 objections, facilitated based on discussions we had with the
8 respective counsel for the current directors and the current
9 employee of LAMCO. That resolution, Your Honor, is set forth
10 in a revised order that we filed with the Court yesterday in
11 both clean and blackline formats, and, if I may, Your Honor,
12 just set forth what that resolution is.

13 It's really twofold, Your Honor. The order makes it
14 clear, or proposed order makes it clear that this two million
15 dollar fund, if you will, will not be replenished, so once
16 exhausted there will be no further funding from the debtors.
17 Secondly, the individuals who would benefit from the
18 establishment of this fund have agreed that to the extent that
19 any of their indemnification claims are allowed their
20 distribution entitlements in respect of those claims would be
21 reduced on a dollar for dollar basis based upon that portion of
22 the two million dollars, if any, which is actually advanced to
23 them or their counsel. It's our understanding that based upon
24 those resolutions the committee is prepared to withdraw its
25 objection, and assuming that counsel confirms that we would

1 respectfully request that for the reasons set forth in the
2 motion and in our reply that the relief be granted.

3 Your Honor, unless the Court has any questions perhaps
4 it would make sense to simply turn the podium over to committee
5 counsel.

6 THE COURT: That's fine. I'll hear from the
7 committee.

8 MR. O'DONNELL: Your Honor, Dennis O'Donnell, Milbank,
9 Tweed, Hadley & McCloy, on behalf of the official committee.
10 Your Honor, Mr. Krasnow's recital of where we are is correct.
11 We did file an objection to the relief requested in the motion,
12 because we do have a long history with this issue in terms of
13 insurance coverage, tail coverage in two instances where the
14 directors and then the approval of the legal defense cost
15 motion back in June. We thought the circumstances were
16 different there. We thought the debtors' business judgment was
17 different there. Here we continued to believe that there was
18 no legal right as originally presented to this type of
19 entitlement for the directors and question the debtors'
20 business judgment.

21 The discussions that Mr. Krasnow alluded to resulted
22 in modifications to the relief being granted, which we think
23 largely address our concerns in terms of the dollar for dollar
24 reduction of any claims that the directors may have on
25 indemnification claims, which would bring the distributions to

1 them closer to those that are being made to all other unsecured
2 creditors and the commitment that there will be no
3 replenishment of this fund.

4 So with those changes we are prepared to withdraw our
5 objection.

6 THE COURT: And you are, in fact, withdrawing the
7 objection.

8 MR. O'DONNELL: We are, in fact, withdrawing our
9 objection, yes.

10 THE COURT: Great. This is approved now as an
11 uncontested matter. I've reviewed the modified order, which
12 reflects the adjustments just described, and I am pleased that
13 this has been resolved, because this really represented one of
14 the very few times in my recollection that the creditors'
15 committee and the debtor were at odds.

16 MR. KRASNOW: Yes, Your Honor. We appreciate the fact
17 that the committee worked with us in resolving this in the
18 manner described.

19 THE COURT: Okay. Fine. It's approved.

20 MR. KRASNOW: Your Honor, if we may jump on the
21 agenda, because it's my understanding that there is something
22 listed, item number 6 is a contested matter, which is now an
23 uncontested matter, and if I may turn over the podium to my
24 partner, Mr. Levine.

25 THE COURT: Okay.

1 MR. LEVINE: Good morning, Your Honor. Richard Levine
2 from Weil, Gotshal for debtors LBFP. This was a motion for
3 sanctions against an ADR counterparty which was not disclosed
4 in the public record.

5 THE COURT: Right.

6 MR. LEVINE: Their counsel is here, and I am pleased
7 to say that based on discussions that --

8 THE COURT: Will he be wearing a bag over his head?

9 MR. LEVINE: No, it's the mask. And, obviously, it
10 was disclosed to the Court and the committee and the U.S.
11 Trustee and so forth. I'm pleased to say that based on
12 discussions that began yesterday afternoon and were resolved
13 with the signing of a stipulation in this courtroom this
14 morning there is an agreement in it by stipulation where the
15 counterparty will be serving an ADR response which responds to
16 these three specific issues raised in the ADR notice, the
17 enforceability of the flip clause in light of the prohibition
18 on ipso facto clauses, the amounts that the debtors claim are
19 due on termination from the two issuers involved, and whether
20 that payment must be made. The counterparty has agreed that it
21 has full authority to negotiate a settlement on its behalf, and
22 the parties have agreed, notwithstanding the fact that the
23 counterparties, as it has participated previously in good
24 faith, and the debtors have argued that they did not, that the
25 counterparty will participate in the ADR process and mediation

1 in good faith going forward. And the stip also specifically
2 recognizes that any settlement may include a mechanism which
3 can protect the issuer from claims of noteholders subject,
4 obviously, to notice the noteholders and approval of the Court.

5 So the debtors and the committee, I think, are happy
6 with this resolution. We expect the ADR to go forward smoothly
7 and hopefully will result in a settlement, or, if not, we will
8 litigate, but we thought it was important that the issues that
9 were raised were resolved either by a Court ruling or by a
10 resolution such as this.

11 THE COURT: I think I should hear from counsel for the
12 undisclosed counterparty confirming that the arrangements just
13 described are, in fact, acceptable.

14 MR. YOSKOWITZ: Thank you, Your Honor. It's Jackie
15 Yoskowitz from Seward & Kissel for the counterparty. Mr.
16 Levine's description is correct. When I saw Mr. Levine's reply
17 to our objection to his motion for sanctions I realized parties
18 were, sort of, saying the same things. Our issue had always
19 been we thought we could negotiate for ourselves, but with
20 respect to the noteholders we had concerns about overpromising
21 at a mediation. With my discussions with Mr. Levine yesterday
22 and the stipulation that we worked out I think we're of the
23 same mind and we understand that there's a mechanism that we
24 can agree on, hopefully, in the future to get everybody on
25 board with a potential settlement. So we're comfortable with

1 the stipulation.

2 THE COURT: Good.

3 MR. YOSKOWITZ: Thank you, Your Honor.

4 THE COURT: Let's proceed with a successful ADR then.

5 MR. YOSKOWITZ: Hopefully we will. Thank you, Your
6 Honor.

7 THE COURT: Okay.

8 MR. LEVINE: Thank you, Your Honor.

9 THE COURT: Okay. So that stipulation will be
10 submitted in writing for approval.

11 MR. LEVINE: Your Honor, we had not prepared it for
12 Court approval. It was just between the parties, but if the
13 Court wants a copy I'm happy to hand it up.

14 THE COURT: There's no need for that. It wasn't clear
15 to me procedurally what you had in mind. If all that's
16 happening is that the motion for sanctions is being withdrawn
17 without prejudice on the assumption that the parties perform in
18 accordance with their separate stipulation that's fine.

19 MR. LEVINE: That is, in fact, what was going on. We
20 are going to file the redacted stipulation on the record so
21 that --

22 THE COURT: But you're not looking for Court approval.

23 MR. LEVINE: But we're not looking for Court approval.

24 THE COURT: Fine.

25 MR. LEVINE: Thank you, Your Honor.

1 MS. MARCUS: Good morning, Your Honor. Jacqueline
2 Marcus, Weil, Gotshal & Manges, on behalf of Lehman Brothers
3 Holdings Inc. and its affiliated debtors. Flipping back, Your
4 Honor, to number 4 on the agenda, this is the first contested
5 matter. It's the application of the debtors for authorization
6 to employ and retain Gleacher & Company Securities, Inc. as
7 financial advisor, effective as of February 17, 2011.

8 As reflected on the docket, Your Honor, objections to
9 the application have been filed by the Office of the U.S.
10 Trustee and the creditors' committee. The debtors filed an
11 omnibus reply in response to the objections as well as the
12 supplemental affidavit of Stephen Hentschel of Gleacher. Our
13 understanding is that the supplemental affidavit resolves the
14 U.S. Trustee's objection with respect to the disclosure
15 matters.

16 In addition, Your Honor, as described in the debtors'
17 reply, there have been some adjustments made to the engagement
18 agreement which resolved the objections of the U.S. Trustee and
19 the creditors' committee to the nunc pro tunc nature of the
20 engagement. Specifically, the monthly retainer has been
21 eliminated, and the schedule that sets forth the applicable
22 transaction fee has been revised to increase the transaction
23 fee payable in certain circumstances, subject to the same
24 fifteen million dollar cap. We filed a revised proposed order
25 last night to reflect those changes, and the revised order has

1 been reviewed by the U.S. Trustee and counsel to the creditors'
2 committee. As a result, although the engagement will still be
3 nunc pro tunc to February 17, 2011, the effect of that is
4 limited to the indemnification provided to Gleacher and to
5 Gleacher's right to reimbursement of expenses.

6 I believe that the U.S. Trustee is prepared to forego
7 any further objections at this point, based upon the language
8 in the proposed order regarding the U.S. Trustee's ability to
9 object to the fees payable to Gleacher based on the
10 reasonableness standard set forth in Section 330 of the
11 Bankruptcy Code.

12 We're left, therefore, Your Honor, with the objection
13 of the creditors' committee. The creditors' committee's
14 remaining concerns relate to the possibility of duplication of
15 services and duplication of transaction fees. As indicated in
16 the debtors' reply and as can be confirmed by Bryan Marsal, who
17 is here in court today, there's no risk regarding duplication
18 of services, because Lazard has not rendered any services to
19 the debtors regarding Archstone. Moreover, as set forth,
20 again, in the application and the reply, the debtors believe
21 that Gleacher is uniquely qualified to advise them regarding
22 Archstone matters, and, therefore, have not requested Lazard to
23 render services relating to Archstone.

24 The debtors want their financial advisor for Archstone
25 matters to be a firm that's familiar with the property,

1 familiar with the management and familiar with the multifamily
2 unit community, and Gleacher satisfies all of those
3 prerequisites.

4 The creditors' committee, which has been actively
5 involved in the debtors' deliberations with regard to
6 Archstone, knows that Lazard hasn't been involved in any of the
7 Archstone discussion and also knows the extent to which
8 Gleacher has been involved in advising the debtors with respect
9 to Archstone.

10 As far as the risk of duplicate transaction fees is
11 concerned, while the committee is correct that the debtors and
12 Lazard have not agreed to exclude Archstone from the services
13 rendered by Lazard, given that in accordance with the order
14 dated March 22, 2011 granting the debtors' supplemental
15 application with respect to Lazard the Court can review
16 Lazard's compensation under the standards set forth in Section
17 330 of the Code the debtors believe that there is little risk
18 that Lazard will be able to demonstrate that it is entitled to
19 a transaction fee with respect to Archstone.

20 In any event, in light of the extensive services
21 rendered by Gleacher to date and the importance of resolving
22 Gleacher's engagement at this time, in light of all the recent
23 activity pertaining to Archstone, the debtors do not believe it
24 is appropriate to make Gleacher take the risk with respect to
25 approval of its fees. Rather, Lazard's entitlement to the fee

1 will be taken up by the Court at a later date if Lazard files
2 an application seeking compensation regarding Archstone.

3 For all of the foregoing reasons, Your Honor, the
4 debtors believe that the engagement of Gleacher on the terms
5 outlined in the application as revised is necessary,
6 appropriate and reasonable, and we request that the Court
7 approve the application.

8 THE COURT: I have a couple of questions, and I am
9 pleased to see that progress has been made in resolving the
10 objections to this application. But first is really one that's
11 based on pure curiosity on my part. Given the sophistication
12 of the parties, how is it possible for Gleacher to have been
13 involved on a consulting basis since February 17 of 2011 and
14 for no application to have been made for approval of that
15 retention? That just shocks me.

16 MS. MARCUS: It's very complicated, Your Honor, but we
17 have -- and that's an understatement.

18 THE COURT: Things in this case usually are
19 complicated.

20 MS. MARCUS: That's an understatement. There have
21 been many iterations of the Gleacher engagement. At certain
22 points in time it was expected that Gleacher would be engaged
23 by the Archstone entity, as opposed to by the debtors. There
24 were a lot of different alternatives considered, and there have
25 been discussions with Lazard for some period of time in an

1 effort to resolve this. To be perfectly frank, the application
2 was drafted many months ago, and we've just been trying to work
3 through it.

4 THE COURT: You anticipate my second question, which
5 is whether or not Lazard will agree to carve out from any claim
6 it might otherwise make in this case those services that are
7 being performed by Gleacher, thereby eliminating any risk that
8 we have to be involved at some future date in an argument over
9 a claim by Lazard for a right to a transaction fee.

10 MS. MARCUS: To date they have not been prepared to do
11 that.

12 THE COURT: Is Lazard represented in court today?

13 MS. MARCUS: They said they might have somebody here,
14 but apparently not.

15 THE COURT: That was a wise move on their part, I
16 think, because I would have called whoever that was up to make
17 public inquiry.

18 All right. Those are my questions. I'll hear from
19 those who have objected to see whether or not the order as
20 modified satisfies those objection.

21 MS. GOLDEN: Your Honor, I'll be brief. Susan Golden
22 for the U.S. Trustee. Ms. Marcus accurately described the
23 nature of the resolution of the U.S. Trustee's issues.
24 Certainly the Lazard fee is of great concern to the U.S.
25 Trustee, but the U.S. Trustee does have 330 rights from

1 Lazard's initial engagement, and with that the U.S. Trustee was
2 satisfied that, if need be, the U.S. Trustee would deal with
3 the Lazard claim for the 17 million dollar transaction fee at
4 the time that Lazard put it an application for it.

5 MR. O'DONNELL: Your Honor, Dennis O'Donnell, Milbank,
6 Tweed, Hadley & McCloy, again, on behalf of the committee.
7 Your Honor, we are pleased, as well, that there's been some
8 progress towards resolving this. We've certainly been trying
9 for a long time to resolve the issues relating to this
10 application. As Ms. Marcus indicated, there has been a long
11 discussion of whether Gleacher should be retained here and how
12 we should deal with Lazard as a result that probably go back to
13 February of this year, so the nunc pro tunc, I think, is easily
14 explainable by that dialogue back and forth.

15 However, we would not be here -- as you observed
16 earlier we -- the committee has rarely objected to the debtors'
17 applications at this stage, when they've actually been before
18 the Court. We've obviously acted behind the scenes in many
19 instances, but here we just got to a point where we knew we
20 could not see eye to eye on the issue, and the single issue,
21 really, that is the one that's been of most interest to us and
22 why we're here today is the possibility of a duplicate fee with
23 respect to Lazard.

24 I don't think we debate that Lazard has not been
25 involved. We haven't seen Lazard involved in this situation.

1 We know Gleacher has been. However, Lazard does have an
2 engagement letter that provides that it gets a fee for this
3 type of transaction. That letter also provides that that fee
4 can be waived or they can carve it out. That has not happened.
5 And it says that Lazard cannot unreasonably withhold its
6 consent, and, notwithstanding that, nothing has happened.

7 There has been a lot of back and forth on the issue,
8 but we're still here today with an application where the
9 debtors are seeking to retain and, ultimately, pay Gleacher for
10 something that Lazard has said, has argued it would be entitled
11 to a fee for as well. And we believe under those circumstances
12 it would be difficult for the Court to grant 328(a) approval
13 here.

14 In terms of the Court needing to make a determination
15 that the fee structure is reasonable, if there is a clear and
16 foreseeable possibility that another professional will assert a
17 claim to this -- assert fees with respect to the same
18 transaction and possibly the debtors would wind up paying twice
19 for the same fees. Under those circumstances making the 328
20 reasonableness determination is difficult.

21 It also would raise an issue for us in terms of
22 challenging it down the road, because if the Court approves
23 this application pursuant to 328(a) it could only be undone if
24 it was shown to be improvident based on events that could not
25 have been foreseen at the time. Clearly we, everyone in the

1 courtroom can foresee at this point that Lazard may, maybe not,
2 but may assert a competing claim here to a fee for the same
3 transaction, and under those circumstances we would not be able
4 to meet the 328(a) standard and could arguably not object to
5 any reduction of the Gleacher fee at that time to take into
6 account a Lazard fee.

7 So our primary issue, remaining issue, is with the
8 need for -- the possibility of a 328(a) approval today. In
9 terms of whether there has to be an approval today at all, I'm
10 not sure why there has to be. There's been eleven months of
11 the back and forth. I think our suggestion is that we go back
12 to the table again and try to get Lazard at the table and try
13 to get this issue resolved and then approve it. With the
14 monthly fees off the table Gleacher isn't go to see any
15 compensation here until they consummate a transaction, so
16 there's no pressing need, from our perspective, to actually
17 approve this today. With this issue on the table we need to
18 have Lazard at the table and we need to try to figure out
19 whether we can definitively resolve this issue to avoid a fight
20 down the road.

21 THE COURT: So that last point surprised me, because
22 my expectation was that I was hearing from the two objectors
23 saying as a result of the revised order we're prepared to
24 accept the engagement. What I'm hearing you say is that you
25 would prefer that this be deferred to another omnibus hearing

1 date, perhaps January 11, and that between now and then some
2 effort be made to clarify Lazard's position. Is that what
3 you're saying?

4 MR. O'DONNELL: I think if that's said that's,
5 perhaps, a fallback more than -- and I think our initial
6 position here is that to the extent that the Court is going to
7 approve it today it needs to approve it with some clear
8 reservation of rights or clear contingency as to the existence
9 of a Lazard fee. It can't be a clear-cut 328(a) approval.
10 That would preclude us from challenging Gleacher's fee down the
11 road to reduce it to take into account a Lazard fee.

12 Should the Court not want to go there the other option
13 here, since we all know that the issue is trying to get Lazard
14 to the table, that we adjourn it and try once again to get
15 Lazard to the table and get it done.

16 THE COURT: Well, I don't think there's going to be a
17 problem getting Lazard to the table, because I am going to
18 direct that to occur, and we're going to have a chambers
19 conference on this sometime before I enter an order. It may
20 not be required that we have a further hearing on it, but I do
21 want to hear from authorized representatives of Lazard as to
22 what their actual position is with respect to any claims to be
23 made with regard to Archstone.

24 I would expect them to exclude Archstone from any
25 claim they might otherwise make. If they refuse to do that we

1 have a problem, and we might as well find out that we have that
2 problem now.

3 I'm available for a conference tomorrow or Friday. Or
4 anytime next week. I am actually here throughout the holidays
5 and do not want this to in any way drag. If it needs to
6 because of holiday plans of parties who need to be at the
7 meeting I am proposing this may end up being put off until
8 January 11, but I view that as a less favorable alternative.

9 So what I am prepared to do is to approve the
10 arrangement subject to there being an acceptable understanding,
11 properly documented, with Lazard concerning Lazard's ongoing
12 claims, if any, with respect to the Archstone transaction, and
13 I am prepared to have a meeting on that tomorrow or Friday.

14 MS. MARCUS: Your Honor, can I take one more shot? I,
15 obviously, will do what you've suggested, but in the
16 alternative, I understand your concern about Lazard's position.
17 I guess I would say from Gleacher's perspective they want to
18 get this resolved as soon as possible, and we think that's
19 appropriate. In fact, they were served, I believe, with --

20 THE COURT: Tomorrow is not soon enough?

21 MS. MARCUS: If it can be arranged I'm certainly
22 available. Everybody from Lehman's side will be available for
23 a conference. My only point was going to be since any
24 compensation requested by Lazard is ultimately up to Your Honor
25 anyway could we get the Gleacher engagement approved now

1 without the reservation that Mr. O'Donnell requested, and then
2 you'll make sure that there is not a duplication of fees at the
3 appropriate time.

4 THE COURT: I can always make sure that there is not a
5 duplication, but I have had personal experience with 328(a) and
6 with the Second Circuit's decision in Smart World, and I want
7 this resolved prior to any formal engagement. I want to see
8 Lazard tomorrow in my chambers, and if that can't be done we'll
9 find another day when it can be done. The approval of this
10 engagement, and I mean no disrespect to the work that has been
11 done by Gleacher and that will be done by Gleacher, but we
12 can't have clashing titans each claiming that they're entitled
13 to significant fees from this estate and have me be the arbiter
14 only to have an argument that I actually don't have the
15 authority, based upon the form of the order, to tell certain
16 people that they need to go away.

17 MS. MARCUS: Okay.

18 THE COURT: So I'm not going to create the problem.
19 I'm going to avoid it.

20 MS. MARCUS: That's fine, Your Honor. We'll contact
21 your chambers to schedule a time.

22 THE COURT: And hopefully that can happen tomorrow.

23 MS. MARCUS: Okay.

24 (Adversary proceeding heard from 10:33 a.m. to 1:49 p.m.)

25 THE COURT: Be seated, please.

1 MR. BERNSTEIN: Good morning, again, Your Honor. It's
2 Mark Bernstein of Weil, Gotshal & Manges on behalf of the
3 Lehman Chapter 11 debtors. The remaining nine items on the
4 agenda are all omnibus objections that were filed by the
5 debtors to claims asserted by former Lehman employees based on
6 restricted stock units or RSUs. Since the objections are all
7 identical, I think it makes sense if Your Honor agrees to take
8 them all at one time.

9 THE COURT: I agree.

10 MR. BERNSTEIN: Okay. The objections seek to
11 reclassify each of the claims as equity interests in LBHI.
12 Prior to the commencement of these Chapter 11 cases, LBHI
13 granted RSUs to employees as part of their compensation, in
14 order to enable the employees to participate in any increase in
15 value of the Lehman enterprise.

16 The RSUs bear the hallmarks of traditional equity
17 interests. The holder benefit from the increased value of the
18 corporation, receive dividends and bear the risk if the
19 corporation should fail. The RSUs has rights to acquire common
20 stock in LBHI, which is all they entitle their holders to
21 receive, followed in the definition of equity security in
22 Section 101-16 of the Bankruptcy Code.

23 A particular telling fact about the nature of the
24 RSUs, Your Honor, is had LBHI delivered to all the holders of
25 the RSUs on the day before bankruptcy the common stock that

1 they were entitled to receive in exchange for their RSUs, we
2 wouldn't be here today, because all the holders would merely be
3 common stock holders, and which would very clearly be equity
4 interests in the debtors.

5 The terms of the programs under which the RSUs were
6 issued also evidence that the claims should be reclassified as
7 equity interests. Under the program documents under which the
8 RSUs were issued, at no time did any of the claimants have any
9 right to demand or receive cash in exchange for their RSUs.
10 The program documents all included language to the effect that
11 "Holdings and any of its subsidiaries' obligations with respect
12 to the" -- this one I'm reading from is 2007 -- "the 2007
13 units granted hereunder, is limited solely to the delivery to
14 you of shares of common stock on the date on which such shares
15 are due to be delivered hereunder. In no way shall Holdings or
16 any subsidiary become obligated to pay cash in respect of such
17 obligations."

18 One of the main contentions that the creditors make in
19 response to these objections is that the RSUs were issued as
20 part of their compensation. The debtors don't dispute that.
21 As part of either their bonus or if they were commission-based
22 employees, part of their compensation was, in fact, issued in
23 RSUs. However, compensation and equity interests are not
24 mutually exclusive. The fact that the equity was issued as
25 part of compensation has no bearing on the classification of

1 these claims or the priority in which they're entitled to
2 recover from LBHI.

3 Two of the program documents, the 2003 and 2004,
4 expressly provided that the claims are to be treated as
5 equivalent with common stock of LBHI. And pursuant to Section
6 510(a) of the Bankruptcy Code, those subordination provisions
7 in the documents should be held enforceable in these cases.

8 Alternatively, Your Honor, should the RSUs be
9 considered claims against the debtors and not equity interests
10 in the debtors, they must be subordinated as equity interests
11 under Section 510(b) of the Bankruptcy Code, as these claims
12 all arise from the purchase of securities.

13 Section 510(b) has been interpreted very broadly by
14 the courts in this circuit and applied in similar contexts as
15 the facts in this case. The bankruptcy courts in the Enron and
16 WorldCom case and the Section Circuit in In re Med Diversified,
17 among other courts, have embraced the broad interpretation of
18 "arising from" in the statute and have subordinated claims if
19 there's any nexus or causal relationship between the purchase
20 of the securities and the damages that are being claimed.

21 In this case, the claimants purchased the RSUs with
22 their labor. It's not -- they didn't actually buy the shares,
23 they didn't exchange cash, but by working for Lehman, they
24 exchanged their labor for these RSUs. Bankruptcy courts in
25 Enron, WorldCom and U.S. Wireless, have all held that employees

1 who receive RSUs as part of their compensation or similar
2 instruments, purchased those securities with their labor, for
3 the purchase of 510(b) -- the purchase requirements. This is
4 settled law in this jurisdiction.

5 Despite their contentions that they had no choice and
6 did not elect to receive the RSUs, by accepting employment for
7 Lehman and going to work every day, they continuously accepted
8 that condition to their employment, which was, part of your
9 compensation will be paid in RSUs.

10 Creditors have asserted a variety of theories and
11 liability against LBHI relating to the RSUs, ranging from the
12 diminution in value of the RSUs, fraudulent statements that
13 were made by LBHI in their financial statements prior to or in
14 connection with the issuance of the RSUs, that led them to hold
15 onto their common stock or these RSUs or induce them not to
16 sell.

17 Other creditors have asserted that the debtors
18 breached their employment agreements by actually issuing these
19 RSUs as opposed to paying them in cash, although no creditor
20 has produced an employment agreement that said your
21 compensation will be paid in cash. And several of the
22 employment agreements that were attached to the responses or
23 the claims specifically provide that Lehman was entitled to pay
24 part of the compensation in equity awards.

25 Courts have held that claims based on all these types

1 of theories of damages have been -- can be subordinated,
2 pursuant to 510(b) of the Bankruptcy Code.

3 Certain employees who were commission-based employees
4 have attempted to distinguish the RSUs that they would have
5 received for the year of 2008 from the other RSUs that were
6 actually issued. When the employees who were commission-
7 based -- each month they received a statement based on their
8 performance about how much equity they had accrued for that
9 month. But those employees actually did not receive the RSUs
10 until -- typically until the end of the year, November or
11 December, I think is typically how it worked.

12 So these employees have argued that they did not
13 receive their RSUs, and therefore those portions of their
14 claims that were based on their 2008 compensation, should for
15 some reason, be treated differently from the portions of their
16 claim for which they actually do have RSUs. Because their
17 argument is they haven't received anything in exchange for
18 their labor.

19 However, there's nothing that says they're entitled to
20 cash in any document that they've provided. And in fact, the
21 way the debtors are proposing to treat those claims is that we
22 will subordinate the entire amount of their claim as equity,
23 not just the portion for which they have issued RSUs. So had
24 they been issued RSUs on a monthly basis, they would have just
25 had RSUs in the amount of that withheld compensation or that

1 portion of their compensation which was equity accrual, and
2 they would be treated the exact same way as the debtors are
3 intending to treat them under these objections, which is that
4 portion -- they would have those RSUs, and those should be
5 subordinated.

6 LBHI has put forth facts and law that dispute the
7 claims asserted by these claimants. And as a result, the
8 burden has shifted back to these claimants to prove by a
9 preponderance of evidence that their claims are valid, based on
10 the law in this jurisdiction.

11 Your Honor, in sum, these employees received exactly
12 what they bargained for when they signed up to work at Lehman.
13 They received the right to acquire common stock in LBHI as part
14 of their compensation. As part of that, the employees also
15 bargained for the risk that Lehman might potentially fail, and
16 then that common stock would not have any value.

17 These equity awards are just that. They were equity.
18 And claimants who hold them should not now be able to bootstrap
19 themselves up to general unsecured creditors by asserting
20 different theories of liability.

21 The creditors' committee has filed a statement in
22 support of the subordination pursuant to 510(b), and the
23 debtors respectfully request that each of the claims be
24 classified as subordinated -- as equity interests in LBHI. And
25 I'm happy to answer any questions Your Honor may have, or it

1 may be proper to hear from some of the respondents, first.

2 THE COURT: Well, let me share with you the challenge
3 that I had in trying to deal with these various objections to
4 claim disallowance.

5 The debtor filed an omnibus reply. The omnibus reply
6 deals with all the legal arguments and also includes, as an
7 attachment, a schedule that references the objections of
8 various claimants without identifying them by name. One of the
9 problems that we had in chambers in attempting to understand
10 the position being advanced was to correlate the position of
11 the debtors with respect to the particulars of each claimant.
12 And that was time consuming and frankly, somewhat burdensome.

13 One of the questions that we still have, however, and
14 I'd like to just understand how we're approaching this, is
15 whether we are dealing today on a claim-by-claim basis, or
16 whether or not we are dealing with all of the claims as if they
17 are part of a class.

18 Judge Gonzalez, in his Enron decision, dealt with
19 somewhat comparable claims that arose in Enron, but that were
20 predicated largely on claims of fraud, but dealt with those
21 claims as one class without going to the specifics of each
22 claimant's assertions.

23 I don't know, as I sit here, how you intend to
24 approach today's hearing. And there are different arguments
25 that have been made by different former employees arising under

1 different annual programs. And I don't know whether or not you
2 intend to approach this as a class-wide issue, which
3 effectively is the creditors' committee's approach, saying you
4 don't have to worry about the specifics; regardless of the
5 particulars, under 510(b) all claims should be treated as
6 equity.

7 So my first question to you is, how am I supposed to
8 get through this thicket? We have a fairly packed courtroom
9 still and we have people on the telephone. Are we doing this
10 on a claimant-by-claimant basis? Are we doing this on a class
11 basis? Whichever way we do it, I want it to be fair and I want
12 everybody to have an opportunity to be heard. And in part
13 because of the added omnibus-type matters that we heard this
14 morning that wouldn't ordinarily be heard at the time of a
15 claims hearing, it's now almost lunch time.

16 MR. BERNSTEIN: Sure. Let me respond to that. We
17 believe that the legal issues that relate to each of these
18 claims are identical. Now, certain creditors, as you stated,
19 raised different type arguments. But the programs under which
20 these RSUs were issued, they may have slight differences from
21 year to year, but in substance, and the relevant provisions of
22 those program documents, for the purposes of the arguments that
23 we make here today, the programs are identical.

24 And we scheduled all of these omnibus objections which
25 were filed at different times throughout the year, all for one

1 hearing, in the interest of fairness. Because some of these
2 parties are pro se, some of them do have counsel. The claims
3 vary in amount. But we thought it made sense to have all of
4 the issues and all the arguments on the table and to deal with
5 them as a class. Either the claims -- the claims are, from our
6 view, the same claims. Reserving the right to -- if certain
7 parties have facts that they assert that are different than
8 others, we can talk about those separately. But generally, we
9 believe the claims and the nature of these claims are the same,
10 and the legal issues are the same, and are prepared to deal
11 with it as a class, unless there do arise, one-off issues,
12 which we can talk about, I guess, as those arise.

13 THE COURT: Well, I guess the first thing I'd like to
14 find out is if there is any affected claimant that objects to
15 treating it as a class-wide matter and wishes to be heard
16 separately -- apparently hands are going up everywhere. So
17 this is going to be not -- according to their wishes, it's not
18 going to be on a class-wide basis. At some point it may become
19 that.

20 There are basically two ways that this can be
21 approached -- maybe more than two, but two that occur to me.
22 One is for every argument made by every claimant to apply to
23 every claimant in the same class, notwithstanding the fact that
24 we are, by a show of hands, preferring to do this on an
25 individual claimant basis. I had thought, as I was preparing

1 for this morning's hearing, that the debtors' response was
2 effectively putting all claims in the same basket, and by doing
3 so, was treating every argument as if it applied to every
4 claimant, and then attempting to defeat each one of those
5 arguments.

6 In some respects, it is fairer to the claimants
7 individually for them to have the benefit of, in effect, every
8 other argument that every other similarly situated claimant has
9 made, whether or not they made that argument, thereby allowing
10 for the possibility that if one argument is a successful
11 argument that applies across the board, that everybody gets the
12 benefit of it, but that if there's an argument that's
13 particular to a particular program or to a particular claimant,
14 obviously that would be personal.

15 I have some concerns just from a case management
16 perspective as to how we deal with all these individuals on
17 this one day. And it wasn't certainly my choice that employee
18 claims would all be heard at one time in this manner, it was
19 the debtors' choice. So I'm going to take suggestions as to
20 the most efficient way to deal with this in a manner that also
21 protects the interests of each individual.

22 MR. BERNSTEIN: Sure. I mean, I think that we will
23 see when the various claimants do get up to state their
24 arguments, that the issues involved are the same. They may
25 want to have -- phrase them differently or characterize them

1 differently. But these claims all arise from identical
2 instruments. And the facts surrounding their issuance was
3 identical. They got them as part of their compensation.

4 So I'm not exactly sure what the different creditors
5 are going to say that would result in there being different
6 rulings or there could be different decisions made on a claim-
7 by-claim basis. And we had thought, as Your Honor, that it was
8 the most fair to allow all of the argu -- any argument made by
9 any claimants to be used for the benefit or by the benefit of
10 any other claimant. Because these issues really, as we viewed
11 them, these claims are the same.

12 Whether someone raised an argument in their response
13 or not, they have the same rights as any other holder of these
14 RSUs. And we think they really should be treated the same way,
15 whatever way that ultimately is. So I think that maybe if we
16 start to hear from the claimants, we will -- it's our belief
17 that we will see that the issues really are the same. I could
18 be wrong. But that's where I think this ends up.

19 THE COURT: Does the creditors' committee have
20 anything to say?

21 MR. O'DONNELL: Your Honor, on that last point I think
22 we agree as well, that that would be the most efficient way to
23 proceed. We think the arguments are -- overlap significantly.
24 And if we grant the benefit of each argument to each of the
25 claimants, I think that's a fair way to proceed.

1 Beyond that, I'm just noting that our objection took
2 the position that the 510(b) arguments are the cleanest and
3 most efficient way to decide this. We wish the circumstances
4 were different. We realize that these -- you know, the former
5 employees were valuable assets of the Lehman enterprise, pre-
6 petition. But the bottom line is that they had two types of
7 claims. They had claims for cash and claims for equity
8 compensation. And equity compensation brings 510(b) into play.
9 And we don't see how any other result other than that advocated
10 by the debtors and the committee is possible here.

11 THE COURT: Okay. I'm going to make a general comment
12 and then I'm going to just take the claimants in turn, and
13 we'll see whether or not these positions begin to clump
14 together. If they do, fine. If they don't, we'll deal with
15 it.

16 In anticipation of today's hearing, I reviewed the
17 papers submitted, including the papers submitted by the debtors
18 in omnibus reply. And it became clear to me that one case in
19 particular was particularly relevant, and that was the case I
20 just referred to earlier, Judge Gonzalez's decision in the
21 Enron matter.

22 It's a very long decision and one that does not, in
23 all respects, apply here. But it's that decision that, in
24 effect, led to counsel's quotation of the exchange of labor for
25 the consideration of RSUs, because Judge Gonzalez used that

1 terminology in his decision in 2006, I believe or 2003. I'm
2 not sure of the exact year. But I did -- if somebody has the
3 year we can correct the record.

4 UNIDENTIFIED SPEAKER: 2006.

5 MR. BERNSTEIN: 2006.

6 THE COURT: 2006? I was right the first time.

7 The decision treated all of the employee claims with
8 sympathy as part of the same class of claimants and focused on
9 Section 510(b) of the Bankruptcy Code, its legislative history,
10 the role of a Law Review article that was published in 1972 in
11 the New York University Law Review, in which Homer Kripke was
12 one of the authors -- I only remember that because he was a
13 professor of law that I had when I was in law school -- and
14 that shows you how old I am.

15 The rather thoughtful decision pointed out that
16 there's a fundamental policy that is at stake in Section
17 510(b), and it's as fundamental as where stakeholders should
18 rank in the distribution of assets out of a Chapter 11 estate.
19 And without recharacterizing what the Court said in Enron, in
20 effect, Judge Gonzalez concluded that regardless of how these
21 rights to receive stock may be characterized, that they are
22 really governed by Section 510(b), which leads to subordination
23 of the contract right to receive stock to the same level as an
24 equity holder.

25 And I want everybody who's about to speak to know that

1 unless you can demonstrate that the instrument governing your
2 right is distinguishable from what was at issue in Enron -- and
3 there's a footnote to the opinion, I think it's footnote 3,
4 where Judge Gonzalez notes it's possible that there may be some
5 way to structure a right to receive restricted stock in a
6 manner that would take it outside the ambit of the 510(b)
7 subordination -- and now I'm paraphrasing -- but I doubt it.

8 In effect, what the footnote says is I'm not ruling
9 for all time, for all purposes, in every example that may come
10 before a bankruptcy court that these stock options are
11 necessarily to be subordinated, but I kind of doubt that it's
12 going to be possible to do that.

13 So I say this so that those who are speaking recognize
14 that what I'm really looking for, if you can tell me, is what
15 it is about your claim that takes it outside of the reasoning
16 that I've reviewed and that I intend to follow. And those who
17 are represented by counsel may want to have the lawyers speak
18 first, only because this is a fundamentally legal issue, and it
19 may be that you'll be helped by what they have to say. And if
20 the lawyers don't get up, that's a bad sign.

21 I'll take anybody who wants to come forward. Now, we
22 have a whole bunch coming forward. Feel free to come forward
23 and sit in front of the bar of the court, and you can get up in
24 turn and make your arguments.

25 MR. ABRAMOWITZ: Thank you. May it please the Court,

1 Steven Abramowitz. I represent Lisa Marcus. Lisa Marcus is a
2 commission salesperson. I do want to distinguish, our claim is
3 very distinguishable from what has been described which is
4 respect of RSUs that have been granted regarding RSU
5 instruments. What this claim relates to is the following
6 methodology that Lehman employed.

7 Lehman had both commission salespeople and bonus
8 employees. With respect to bonus employees, they received
9 their money at the end of the year, and it was a simple matter
10 that when Lehman typically issued RSUs at the conclusion of the
11 year, which for this year would have been 2008 -- November 30,
12 2008, they would have simply deducted that from the bonus, and
13 that would have paid for the RSUs. At the time the RSUs would
14 have been issued, the value of that RSU would have been
15 determined, the number of shares, what the strike price would
16 have been, et cetera.

17 For commission salespeople, like my client, because
18 the draw and their commissions goes up and down in the year,
19 they simply withhold that money from their compensation during
20 the year. And in the claim we attached a compensation
21 statement produced by Lehman that showed what that deduction
22 was.

23 Lehman, in July 2008, because of all the turmoil that
24 was facing the company, they did decide to issue some of the
25 anticipated November '08 RSUs early. And some -- so people did

1 get the benefit of RSUs. And then my client would have had the
2 benefit of the increase and decrease for that small portion.
3 That portion is not included in the claim that I'm debating.
4 And this claim does not involve any RSUs that were issued.

5 What happened is, compensation was deducted every
6 month from Lisa's commission and draw, and then the bankruptcy
7 intervened. Because the bankruptcy intervened, a couple of
8 things happened. Number one, the RSUs were never issued,
9 because a critical event had to have happened. Lehman's board
10 would have had to have met. They would have had to approve the
11 RSUs. They would have had to, importantly, determine what the
12 number each employee would get, and that would have been based
13 on the price.

14 At that point, had the RSUs been issued, Lisa would
15 have been a beneficiary and had the detriment of the increase
16 or decrease in the stock. But Lehman went into bankruptcy
17 before that could happen. So I contend that this is simply a
18 case of compensation that was not paid, that is due under the
19 labor law. It's a right to payment.

20 If anything, the most that Lehman had is, had Lehman
21 not gone into bankruptcy, they would have had the right to have
22 issued RSUs in exchange for that money. But that right, at
23 most, would have been right that under 365 is not enforceable.
24 This is simply, again -- we're not talking about RSUs that were
25 issued. We're not talking about the provisions of the various

1 instruments that say once RSUs are issued they vest under the
2 following circumstances; they're forfeited under the following
3 circumstances; you're not entitled to stock instead of your
4 RSUs. This strictly relates to deductions from pay for a
5 commissions salesperson that were not received because of the
6 intervening bankruptcy. And it's not in respect to any RSUs
7 that were issued.

8 So for this amount, there was none of the
9 characteristics that Judge Gonzalez in Enron and that the
10 court, particularly in Med Diversified, where they talk about
11 someone who bears the risk and rewards of shareholding, should
12 bear that risk and be subordinated. Lisa never got that
13 opportunity, because the stock was never issued. So she had
14 effect as being treated differently than non-commission
15 salespeople who, you know, they never got that -- they never
16 got the bonus; the bonus was never used for the issuance of
17 RSUs. This was simply pay that was deducted as security by
18 Lehman for the possible issuance, which issuance never
19 occurred.

20 THE COURT: Let me ask you how this program worked in
21 one detail that occurs to me that could be of relevance. Did
22 Lisa or others like her have the option to not buy stock? In
23 other words, could they right to payment be a right for payment
24 in cash, or was it simply money set aside that could only be
25 used to acquire the RSUs?

1 MR. ABRAMOWITZ: I believe that had the board actually
2 acted to issue the RSUs, they could have only been used for
3 RSUs.

4 THE COURT: So if the money could only be used for
5 RSUs and the RSUs were never issued, how can there be a claim
6 for money? Because at most, there would have been a claim --
7 assuming they'd been issued -- for the equity which would be
8 subordinated. I recognize that there's an inequitable aspect
9 to this and that money is reserved and then never paid. But
10 the money that's reserved and never paid could never be
11 received anyway.

12 MR. ABRAMOWITZ: I think it's -- well, I mean, it's
13 clear from the statements -- I mean, this is -- these are based
14 on commissions and draw that was earned by the employee.
15 Correct, Lehman had -- it was a part of their compensation
16 scheme to issue RSUs in November. The plan documents are clear
17 that the amount of that is to be determined at a future time.

18 I think it is decisive, Your Honor, that the
19 bankruptcy intervened. I believe that had Lehman -- forget
20 about a bankruptcy -- had Lehman done a merger, you know, in
21 the interim; had they terminated the employee; there'd be a --
22 had I represented a client in that context, I would have said
23 this is the money, you never gave me the RSUs, so this is not a
24 question about whether it vests because of a voluntary
25 termination or not. This is simply pay.

1 Normally, in the normal course, the employee is happy;
2 the company works; and it's understood, we'll get those RSUs.
3 If the stock price happens to be down, we'll get a lot of RSUs
4 when they're issued; if the stock price is up, we'll get less.
5 But we will, at that point, become someone who benefits from or
6 risks that of being an equity holder. I don't know if I
7 answered your question. I see your perplexed --

8 THE COURT: Well, I am perplexed --

9 MR. ABRAMOWITZ: -- expression.

10 THE COURT: -- only because I'm not sure I know how
11 this works --

12 MR. ABRAMOWITZ: Okay.

13 THE COURT: -- in practice. Is there a scheduled
14 deduction that occurs with each commission payment that's
15 otherwise due that is set aside for purposes of purchasing the
16 RSU? Is that how this works?

17 MR. ABRAMOWITZ: I don't believe that money is
18 literally put in escrow. And we're not making a constructive
19 trust fund. There is, though, a deduction from the
20 compensation amount that is reflected. In other words, the net
21 cash paycheck that someone gets is net of what the deduction is
22 for, what I'll call, anticipated RSUs. But the key is that
23 it's anticipated. And in the normal course, people know that
24 at the end of the year they're going to get -- you know, if the
25 board acts and nothing happens in the meantime, they will get

1 those RSUs with the rights and vesting and risks attendant to
2 that.

3 THE COURT: But that to which there is an entitlement
4 is something which is, if received, is subordinated?

5 MR. ABRAMOWITZ: If the RSUs were received -- and I'll
6 give deference -- I'm sure other counsel will argue what the
7 rights of an RSU holder are -- but if those RSUs had been
8 issued, we'd be having a different discussion. I would not --
9 then I either would be arguing or not whether those RSUs
10 themselves are claims. And I think the argument that counsel
11 for the debtors would make is well, when you got those RSUs, if
12 the stock went up the next day, you benefited; if it went down
13 the next day you didn't benefit. But I'm not making that
14 argument because they were never issued.

15 THE COURT: So your distinguishing argument is these
16 are claims based upon RSUs that were never issued, and so they
17 should be treated as claims?

18 MR. ABRAMOWITZ: Essentially. But the key point is,
19 it is compensation that Lehman withheld basically as a security
20 device to make sure the money would be there. So it's really
21 compensation. But the key distinguishing is, I'm not like the
22 other RSUs, because I never got them. So I want to make it
23 clear that this is a compensation-related claim.

24 The reason Lehman did the withholding is that they
25 had -- because unlike bonus employees, where they just take it

1 out of the bonus, for commission employees, they can't do that.
2 They have to do it as the commissions are earned.

3 THE COURT: Okay. Thank you.

4 MR. ABRAMOWITZ: Thank you.

5 UNIDENTIFIED SPEAKER: I don't mean to be redundant,
6 but Steven Abramowitz and Lisa Marcus are part of this as well.
7 I'm part of their group. And it is the exact same issue of
8 funds deducted and no RSUs ever granted. So, I won't take up
9 more of your time.

10 THE COURT: And do you know what happens to the funds
11 that are deducted?

12 UNIDENTIFIED SPEAKER: They're withheld. They were
13 withheld from our paychecks, but they were never remitted to us
14 in any way. And we were sort of lumped -- according to Weil --
15 as a group that owned RSUs. We did not ever get RSUs. The
16 bankruptcy occurred two months before.

17 If you send somebody for a container of milk, and they
18 don't get it, does that mean that you don't get your money
19 back? You know, nothing was ever purchased. We were never
20 reimbursed or returned the money that was withheld from us.
21 And -- understood, if you owned the stock, that's an
22 unfortunate thing, and most of us lost everything. But if you
23 didn't buy the stock, why are you entitled to hold onto that
24 money?

25 THE COURT: Okay. I understand the argument.

1 MR. TOFEL: Lawrence Tofel of Tofel and Partners for
2 Charles Diccianni. We had filed papers. Mr. Diccianni's
3 affidavit -- let me actually -- Mr. Bernstein started, I think
4 with a false premise, and that is, I think the motion starts on
5 the premise of we issued these RSUs and everything then falls
6 from there. As you've heard from counsel, and my client's in
7 the exact same position, there are no contract documents; there
8 are no contracts signed by Mr. Diccianni at all. He was never
9 given a choice as to what to do. They simply take money out of
10 his commissions.

11 They allocate them to something, which they never
12 issue. And in a court of equity, the debtors' counsel now
13 comes in and says well, if we'd issued the RSUs we wouldn't be
14 standing here. Okay. But you didn't. You took my client's
15 money, you didn't give him anything. He had no choice, no
16 rights. And now he's simply relegated to the ranks of a holder
17 of a security that they didn't issue under equitable
18 subordination?

19 I'm not entirely sure that the debtor would be
20 entitled -- or the creditor's committee -- now, I understand
21 their agendas -- would be entitled to invoke any equity when
22 they didn't act equitably. This is money taken from commission
23 employees, long-term employees who are still there working for
24 Neuberger Berman; monies taken out. They're told what they're
25 going to get; they don't get it. It still is simply sitting

1 there. I don't know where the money went. There's no
2 agreement. There's no understanding between the parties. It's
3 simply self help when Lehman comes in and takes over Neuberger.

4 So the money is pulled out of his compensation. And
5 he's left to be told that he is actually an equity holder of a
6 company that he never was offered or actually had equity in?
7 Again, that's the basis of our argument. So I don't think --
8 to answer Your Honor's direct question -- I don't think Judge
9 Gonzalez's opinion and the progeny of it applies.

10 That is, the debtor is trying to invoke these
11 principles of equitable subordination with respect to
12 securities that they never issued. There is nothing in this
13 record that Mr. Diccianni ever signed, recognized or anything
14 submitted by the debtor that Mr. Diccianni acknowledge that he
15 was getting stock or agreed to have get stock. He wouldn't
16 have and he didn't. That's our argument.

17 THE COURT: Okay.

18 MR. KAPLAN: Your Honor, my name is Eugene Kaplan and
19 I'm from the firm of Kaplan Landau. I represent, in three
20 separate objections, nine managing directors of Neuberger
21 Berman.

22 And their claim here is very different and has not
23 been addressed either by the debtor or by the creditors'
24 committee, because the debtor, in their response says --
25 quoting essentially Judge Gonzalez, "In willingly engaging in

1 the exchange of labor for equity awards, the respondents
2 bargained not for cash but to become shareholders." And as we
3 observed in our papers, our clients were all managing directors
4 of Neuberger Berman at the time Neuberger Berman was merged
5 into Lehman Brothers.

6 Some of them, at that time, because they were partners
7 in Neuberger Berman prior to it becoming a public corporation,
8 were subject to nonsolicitation and noncompete agreements to
9 begin with. Others, at the time of the merger, became subject
10 to nonsolicitation and noncompete agreements, and in fact, as
11 substantial shareholders, senior managing directors and the
12 like of Neuberger Berman, as a matter of law, could not have
13 solicited or competed with the Neuberger Berman entity that
14 became part of Lehman Brothers.

15 So my clients found themselves in the position of
16 having developed these tremendous books of business as
17 Neuberger Berman employees, and as Neuberger Berman employees,
18 not being subject to taking half their pay in restricted stock
19 units or the like, and then because of the merger and by no act
20 on their part, being subjected to the Lehman pay structure.
21 And they had no choice but to accept the Lehman pay structure,
22 because had they walked away, they would have forfeited their
23 tremendous books of business and their ability to earn a
24 livelihood, because they had developed -- I mean, as you will
25 see in your papers, some of these people were managing

1 directors who were in control of six billion dollars worth of
2 business, and by the time Lehman went bankrupt had control of
3 seventeen billion dollars worth of business.

4 And so they never willingly exchanged their labors for
5 Lehman's pay structure, they had no choice in the matter. They
6 didn't bargain for stock as did the plaintiff or the party --
7 creditor in Med Diversified. They clearly fall outside of
8 Judge Gonzalez's opinion in Enron and the progeny of Enron.
9 These people never purchased anything. They never were willing
10 purchasers.

11 They were essentially, because of the merger, put into
12 a pay system that they did not accept, but had no choice --
13 that they had no choice but to accept in order to continue to
14 engage in the business that they had engaged in collectively
15 for the hundred years previously, and which they continue now,
16 now that Neuberger Berman has been spun out of the debtor and
17 is now back as a freestanding entity. And they continue to do
18 what they do without being subject to a pay structure.

19 It's for the five years or four years that they were
20 merged into Lehman Brothers, that they were compelled to be a
21 part of the pay structure where half of their compensation was
22 withheld and paid in these restricted stock units. And they
23 have a claim for their compensation. Whether it's a claim for
24 unjust enrichment or a claim for breach of contract, their
25 claim is that they never voluntarily participated in this pay

1 structure; that this was something thrust upon them. And that
2 distinguishes them quite clearly from the creditor in Med
3 Diversified, the creditors in Enron, and in all the other cases
4 that have been cited by the debtor. And I think that is a
5 significant difference.

6 THE COURT: It's a definition of involuntary servitude
7 I've never heard before.

8 MR. KAPLAN: It's not involu -- well, it is
9 involuntary servitude in a way. I mean, if you say to someone,
10 you either can work for us --

11 THE COURT: But isn't this --

12 MR. KAPLAN: -- or you can start over. You can give
13 up your life's --

14 THE COURT: -- isn't this true of --

15 MR. KAPLAN: -- work and start over --

16 THE COURT: -- but isn't this true of every -- pretty
17 much every large corporate employer? Because if you are an
18 employee in a large organization, you necessarily lack
19 individualized bargaining rights. You get the benefit of the
20 structure that you voluntarily entered as an employee, but with
21 mergers and acquisitions and the evolution of business in the
22 twenty-first century, where you started isn't necessarily where
23 you end up. And isn't it a voluntary act to stay?

24 MR. KAPLAN: I would submit it is not, in this
25 instance, where you are -- where your choice is, as a matter of

1 law and as a matter of contract, you cannot compete and you
2 cannot solicit and you cannot go out and do anything except
3 start as though you had just gotten out of graduate school, and
4 give up the twenty years or thirty years or whatever you had
5 put in at Neuberger Berman. I would submit that it is not.
6 You don't have that choice.

7 THE COURT: You suggest this is driven by the
8 noncompete provisions of the employment arrangements?

9 MR. KAPLAN: In part, yes. In part -- in the
10 noncompete provisions of the employment arrangements that
11 either occurred at the time of the merger, or in the instance
12 of a number of the claimants, at the time that Neuberger Berman
13 went public, which was long before the merger with Lehman, when
14 they became -- they couldn't compete with Neuberger, so they
15 couldn't compete once Neuberger merged. And they did not
16 volunteer to become part of this pay structure. They just
17 became part of the pay structure, because they had no choice in
18 the matter.

19 They could basically retire and give up their life's
20 work or they could accept the pay structure that Lehman thrust
21 upon them. But they didn't have a choice.

22 THE COURT: Okay. I understand your argument.

23 MR. KAPLAN: Thank you.

24 THE COURT: Thank you.

25 MS. NADRITCH: Good afternoon, Your Honor. I'm

1 here -- my name is Jordanna Nadritch. I'm from Olshan
2 Grundman, on behalf of claimant, Christiane Schuster. She has
3 filed a claim in this matter -- to help Your Honor facilitate
4 the reconciliation, her claim number is 11369.

5 Your Honor, my client was an employee in London in
6 Lehman Brothers in Europe for nine years. As part of Ms.
7 Schuster's compensation consideration she received three
8 components. She received cash -- a salary, she received RSUs,
9 and she received stock options.

10 Your Honor, Ms. Schuster's claim does not address the
11 stock options. Ms. Schuster acknowledges that stock options,
12 as Judge Gonzalez's opinion has explained, are equity and can
13 be reclassified under 510(b) or subordinated under 510(b). The
14 distinction, Your Honor, is an RSU is not a stock option and
15 the debtors' various plans that they filed with the Court as
16 well the ones that actually govern my client, which were not
17 filed with the Court, distinguished between the RSUs and stock
18 options.

19 They are different vehicles. An RSU is not equity,
20 Your Honor. And I could walk you through that and explain to
21 you, you know, why we believe an RSU is not equity and why
22 Judge Gonzalez's opinion in Enron is applicable to stock
23 options, and not to RSUs, necessarily.

24 An RSU, Your Honor -- let me just step back one second
25 to make clear, the debtors reply they filed, I think it was a

1 few days ago, attaches various agreements. Those agreements,
2 Your Honor, don't tie to my client's claim. They have not
3 established how they tie to anybody's claim specifically.
4 There are various agreements, and they've put them forth in the
5 record, but I do have with me today two agreements from my
6 client that I have spoken with last night in Europe that do
7 apply to her claim. And they are somewhat different, Your
8 Honor, than the agreements filed by the debtors.

9 THE COURT: Let me just clarify. Was your client
10 employed by LBIE?

11 MS. NADRITCH: Yes. Well, it's Lehman -- it was
12 Lehman Europe, Your Honor.

13 THE COURT: Lehman Brothers International Europe?

14 MS. NADRITCH: Yes. And the way it worked is her RSUs
15 were granted through LBHI. That's how all the RSUs were
16 granted, as far as I understand. So her claim resides at LBHI,
17 but her employment was through Lehman Europe.

18 With respect --

19 THE COURT: So does she have a claim in the SIPA case
20 or does she have a claim in this case?

21 MS. NADRITCH: In this case, Your Honor. And, Your
22 Honor --

23 THE COURT: You'll have to explain this to me.

24 MS. NADRITCH: Oh.

25 THE COURT: You have too many affiliates already.

1 MS. NADRITCH: I'm sorry?

2 THE COURT: You have too many affiliates already. I'm
3 not sure how you have a claim --

4 MS. NADRITCH: Well, pursuant to --

5 THE COURT: -- in the LBHI case.

6 MS. NADRITCH: -- well, pursuant to Ms. Schuster's
7 employment -- and I don't have the terms of her employment
8 exactly with me, but I do have her equity bonus award
9 compensation package with me -- let's say two years, 2005/2006.
10 The equity awards do resemble the -- in similar function,
11 programs filed by the debtors, but they are different.

12 But it's no -- it should be of no issue whether her
13 employment was in Europe or in America. The way the RSUs were
14 granted, were granted through Lehman Brothers Holding, Inc.
15 They were granted through the U.S. entity. Her statements came
16 from the U.S. entity. Her employer happened to have been in
17 London, but her statements came in her -- her RSUs were through
18 the U.S. entity.

19 With respect to the RSUs, Your Honor, I mean, what I
20 was alluding to earlier was that an RSU is different than a
21 stock option. An RSU is not a grant on the first day. A stock
22 option is a grant on the first day. An RSU is a conditional or
23 a contingent grant that vests in five years' time. And it
24 can't be sold, it can't be pledged, it can't be transferred.
25 The agreements all state that.

1 And the agreements all distinguish between an RSU and
2 a stock option. I think the debtors, in their -- even in their
3 reply, tried to carve out -- in their attempt to explain why an
4 RSU was equity, they explained how the exception to equity is a
5 right to convert. And in explaining how -- the exception to
6 the right to convert, they note that, for instance, a
7 convertible note is the exception, as a convertible note is
8 convertible into equity, it's a right to convert. And that's
9 an exception to 101-16.

10 Well, I think, Your Honor, an RSU is exactly that.
11 It's exactly a convertible note. It's the exception to 101-16.
12 It's a right to convert. Whereas a stock option, actually,
13 Your Honor, is listed in 101-16(c), I believe, where it says
14 it's a right to purchase. That's not what an RSU is, Your
15 Honor. It's not what my client held. They held a right to
16 convert. And that's why I think, in the first instance, it's
17 completely distinguishable from a stock option and Judge
18 Gonzalez's opinion in Enron.

19 You know, as a second matter, Your Honor, there was
20 opportunity, actually, for the RSUs to be paid in cash.
21 Specifically, upon a friendly change in control, the RSUs could
22 be exchanged for stock or cash. And I'm not here to argue
23 whether the bankruptcy and the sale of assets to Barclays or
24 whoever else was a change in control -- a friendly change of
25 control -- but there was that ability.

1 So despite the debtors' contention that it could never
2 be paid in stock, in fact, my client's agreements do provide
3 upon a change of control -- a friendly change in control, there
4 could be the option to receive the RSUs in cash.

5 You know, separately, Your Honor, my client's
6 agreements don't contain any subordination provisions, unlike
7 some of the other agreements filed by the debtor. But to
8 really hone in on Your Honor questions, do -- even assuming,
9 arguendo, that 510(b) even -- you were to look at 510(b) in
10 relation to RSUs, assuming you could argue it's a security,
11 which, Your Honor, I don't believe it is a security, because
12 it's excepted under 101-16(c) and 101-49 -- what my client is
13 seeking is not damages. It's seeking simply compensation.

14 It's not on account of fraud. In Enron, those
15 particular employees were seeking damages on account of the
16 fraud perpetrated by the company, by Enron, and were seeking
17 damages on account of those stock options. My client's not
18 alleging fraud; she's not alleging breach of contract claims or
19 tort claims. She's simply seeking to receive the compensation
20 that she believes she is owed, on account of her employ. And I
21 think that's a very large distinction between the Enron
22 decision and where we are today.

23 THE COURT: Okay. Thank you.

24 MS. NADRITCH: Thank you, Your Honor.

25 THE COURT: Before we proceed further -- and I'm not

1 cutting anybody off -- I'm recognizing that it's 1 o'clock, and
2 there's still a number of people who wish to be heard. I think
3 we're going to need, at some point, to take a break or to talk
4 about a rescheduled hearing.

5 I think it makes sense before talking about a
6 rescheduled hearing, to take a break and then my suggestion is
7 that we break until 2 o'clock. As you heard if you were
8 listening this morning, I have a 3 o'clock chambers conference
9 that I've scheduled. I'm going to take a break at 3 o'clock.
10 Whether I come back at 4 o'clock or we come back another day, I
11 don't know.

12 But this has turned out to be a much longer and, I
13 think, difficult to manage a process than certainly I had
14 contemplated. I'm going to suggest that debtors' counsel give
15 some thought during the lunch break as to how best to manage
16 what I think has the potential of being an unmanageable day.

17 We'll take a break till 2.

18 (Recess from 1:02 p.m. until 2:06 p.m.)

19 THE COURT: Be seated, please.

20 MR. BERNSTEIN: Good afternoon, Your Honor. Mark
21 Bernstein from Weil Gotshal on behalf of the Lehman debtors.
22 As you suggested, after the morning session, we discussed with
23 the creditors' committee and considered how best to proceed.
24 And we still believe that since there are, we think, mainly
25 common issues, we think we would like, if the Court is willing

1 to try to get through them before 3:00. We believe --

2 THE COURT: Well, here's --

3 MR. BERNSTEIN: -- at some point, the issues are going
4 to start to be repetitive and --

5 THE COURT: We're here and I think we should do it.
6 I've given some thought to the presentation thus far. And I
7 have a thought I'd like to share before we start.

8 It occurs to me that while it's true that the burden
9 has shifted to the claimants as a result of the showings made
10 by the debtors, there's at least in my mind, and I don't know
11 if it's in the mind of others, some confusion as to how the
12 omnibus response applies to each particular claim. And I think
13 it would be useful, certainly to the Court, if the debtor were
14 to provide an annotated supplement or some further briefing in
15 which the position that is broadly expressed is applied with
16 particularity to individual claimants.

17 I also think that it would be useful for the claimants
18 themselves to have an opportunity to respond. So what I am
19 suggesting is what amounts to another round of relatively
20 concise supplemental papers on the subject so that arguments
21 such as those that have been made thus far today can be more
22 grounded in the particulars.

23 MR. BERNSTEIN: Sure. Happy to work and provide that
24 to the Court.

25 THE COURT: Okay. And it seems to me that some

1 schedule might be worked out where the claimants themselves
2 that would have a common date for not only your supplemental
3 pleading but thereafter for those claimants who wish to respond
4 in writing to have a date when that will occur. Otherwise,
5 that opportunity is waived.

6 MR. BERNSTEIN: Okay. We can work into the pleading
7 and establish a response deadline, a reasonable response
8 deadline as well.

9 THE COURT: Okay. And I think that some kind of
10 notice should probably go on the claims docket so that for
11 those parties who may be appearing by telephone or may have had
12 to leave because this turned out to be a fairly prolonged day,
13 they'll have a chance to know what you know --

14 MR. BERNSTEIN: Absolutely.

15 THE COURT: -- about what I've just said.

16 MR. BERNSTEIN: Certainly. We will get that done.

17 One point I wish to just correct for the record and then I'm
18 happy to let -- we can continue with the responses from the
19 various claimants. The last attorney who spoke, she was the
20 attorney for Christiane Schuster. She had provided us with
21 additional documents, program documents, which Lehman did not
22 previously have. We've taken a look at these throughout --
23 during the lunch break. And just to clarify one thing she
24 said, she implied that there was language in these documents
25 that said that claimants were entitled to get cash or could get

1 cash in exchange for their RSUs. The only place this refers to
2 receiving cash is if there's a friendly change of control. And
3 in that circumstance, it is Lehman's decision whether to pay
4 cash or equity in exchange for those RSUs. There is no right
5 or entitlement to cash.

6 So, other than that, I'm happy to hold my responses
7 till all the other arguments that have been made until we go
8 through all of them.

9 THE COURT: Okay.

10 UNIDENTIFIED SPEAKER: I just want to request that
11 we -- I'm not here as an attorney and you've heard from
12 attorneys. Could you hear from someone who is a claimant and
13 directly offended?

14 THE COURT: Oh. We're going to hear from everybody
15 who wishes to say something assuming we have time. And if we
16 don't have time and there are people who still wish to be
17 heard, we'll have another hearing date.

18 UNIDENTIFIED SPEAKER (TELEPHONICALLY): Well, what is
19 the cue for telephonic appearances today?

20 THE COURT: I'm sorry. What was that about
21 telephonic --

22 UNIDENTIFIED SPEAKER: Forgive me, Your Honor. What
23 is the cue or the order in which you will hear telephonic
24 appearances since we're not there to see the line

25 THE COURT: Well --

1 UNIDENTIFIED SPEAKER: -- of the creditors' attorneys?

2 THE COURT: -- I think that in order to deal with the
3 people I see before I deal with the people who are unseen,
4 everybody who is in the courtroom will come ahead of everybody
5 who's on the telephone. And then once we get to those who are
6 appearing by telephone, you're going to have to first identify
7 yourselves in advance. I'll take down notes as to who's on the
8 phone and we'll determine some appropriate order.

9 UNIDENTIFIED SPEAKER: Thank you.

10 MR. MICHAELSON: Good afternoon, Your Honor. Robert
11 Michaelson. I represent three claimants: Morgan Lawrence,
12 Nicole Lawrence and Brian Monahan. And I have three comments
13 to make and I'll be as brief as possible. The first one is
14 really procedural. I represent another claimant who has RSU
15 claims under the 185th omnibus objection which is not being
16 heard today. His claim is more -- is broader than just the
17 RSUs. Now I spoke to Mr. Lemons at Weil and he explained that
18 it was only RSU claims today. If a claim -- if I heard him
19 correctly, the reason other claims are not being heard is
20 because they involved other issues. However, to the extent
21 that there others besides my client who has RSU claims, it
22 would seem that it's necessary to tie everyone in since they're
23 going to have their say in this as well. And so, I'm posing
24 that as an issue. I don't mean to overcomplicate this, but if
25 we're going to be talking about the RSUs, they should be all of

1 the RSUs not just those people who were noticed for hearing
2 today.

3 THE COURT: Well, I'm not sure I know what you're
4 requesting. Are you proposing that there be another hearing at
5 which time everybody that has an RSU claim will have an
6 opportunity to be heard and it will be, in effect, a
7 continuation of today's hearing or are you proposing that to
8 the extent that there is a determination that applies to the
9 class of holders of RSU claims, it will apply to everyone?

10 MR. MICHAELSON: Well, I would prefer if it didn't
11 apply to everyone, I can only speak for my client. I would
12 think that someone would want their day in court. To the
13 extent that a determination is made, it's going to become the
14 law of the case and they'll be effectively precluded from being
15 able to argue their position. Now with respect to my client,
16 I'm going to be arguing -- making the same arguments for all of
17 them. So he's not affected by this. If debtors' counsel tells
18 me he's the only one other than -- who's affected by this,
19 that's one situation. But if there are others, I would think
20 that we run the risk of having a ruling that people didn't have
21 an opportunity to participate in.

22 THE COURT: Well, I'm not sure that that's true but I
23 hear what you're saying. We have a hearing that was noticed
24 with respect to a certain sequence of claims objections that
25 all relate to the RSU claims. The debtor has filed a single

1 response applicable to all of the claimants who are in court
2 today or had notice at least that this was happening today.
3 The position of the debtor is that -- and they can certainly
4 speak for themselves but I'm going to repeat my understanding
5 of their position. Their arguments with respect to entitlement
6 apply to an entire class in much the same way that Judge
7 Gonzales' decision in Enron, by its own terms, applied to an
8 entire class of claimants. For that reason, there will be
9 issue preclusion and there will be a result that is binding
10 assuming either to determine that there is a proper class-wide
11 disallowance of all of these claims or a subordination of these
12 claims to equity. So that issue is out there.

13 Whether or not an individual claimant has the ability
14 to distinguish its claim and, in effect, obtain separate
15 treatment, that's what we're doing today. If someone else that
16 didn't have notice of today's hearing or is subject to a
17 different omnibus claims hearing schedule, presumably that
18 opportunity will exist to present separate and independent
19 argument at that time. But those arguments may be trumped to
20 the extent that I were to determine in the context of today's
21 proceeding that there is class-wide preclusion.

22 Have I responded?

23 MR. MICHAELSON: You have, Your Honor. I'd still be
24 concerned that perhaps there is an attorney representing some
25 claimant out there who has a take on this that the rest of us

1 don't have that might be persuasive to the Court and that would
2 affect the ultimate outcome. I think that what's represented
3 here today is probably in all likelihood pretty much the
4 universe of arguments that would be raised. But I don't
5 pretend to know everything. And I don't think most of the
6 people here do. And so, I lay that out as a possibility.
7 Whether it's real or not, I don't know. But I just mention it
8 because I was aware of that situation with my particular client
9 and I thought it should at least be brought to the attention of
10 the Court.

11 THE COURT: Thanks for bringing it to my attention but
12 I think what we're going to deal with is what's before us --

13 MR. MICHAELSON: Okay.

14 THE COURT: -- instead of what might be out there.

15 MR. MICHAELSON: I appreciate that, Your Honor. I
16 will be brief. Two substantive points. The first one has to
17 do with the Enron case. As Judge Gonzales said, that case was
18 limited to the facts presented to the Court. And one of the
19 facts presented to the Court involved an agreement that was a
20 precursor to employment. There was also a fraud element but it
21 was a precursor to employment. In this particular instance, it
22 was not a precursor to employment. There was no bargain in the
23 sense that that term is used as an equivalent of a sale. These
24 were well compensated employees who were given what amounted to
25 a take-it-or-leave-it choice. There was no bargaining whether

1 in the legal sense or in the generic sense. They were told
2 that if they wanted to maintain their employment, they had to
3 do this. Now to the extent that Judge Gonzales has said that
4 his case was limited to its facts, that is a material
5 distinction that I think must be noted. And in the other
6 cases, most of the other cases, cited by the debtor, there was
7 a prior vesting that would distinguish it. There was no
8 vesting in this particular case. These employees were told
9 take it or leave it.

10 Now Your Honor made a very good point which is you can
11 walk. You can vote with your feet. You don't have to stay
12 there. But I would say that that is a very weak bargaining
13 position if it's a bargaining position at all. And I think
14 this sounds more like a classic contract of adhesion in the
15 sense that everything was set up. There was no choice. It
16 was, as I said before, take it or leave it. Employees were
17 highly compensated. They did not want to lose the valuable
18 position they had. And so they were, in essence, tied to this
19 company through this agreement until such time as the vesting
20 occurred and they could realize the gains from the commissions
21 they had that were deferred.

22 So I think that Enron is not controlling in this
23 particular case.

24 THE COURT: Well, your particular clients, what were
25 there positions with Lehman?

1 MR. MICHAELSON: They were commission salespeople.

2 THE COURT: Not Neuberger Berman people?

3 MR. MICHAELSON: They were not Neuberger Berman
4 people.

5 THE COURT: So they're more like the people described
6 right at the outset of the hearing this morning when we were
7 talking about a commission claim and stock that was not issued
8 because of the intervention of the bankruptcy? Is that what
9 we're talking about?

10 MR. MICHAELSON: That is correct. Essentially, the
11 company came to a crashing halt. And whatever hope they had of
12 ever realizing on that vanished. The stock was simply not
13 going to be issued. Now there are really two components of
14 that. There was that which was taken prior to 2008. And then
15 you've heard the arguments before that there was money that was
16 paid over from 2008 and not invested in any particular fashion.
17 And in speaking to my client during the break, he mentioned to
18 me that there were terms and conditions under which money that
19 was withheld during that period before it was invested would be
20 returned to the employee in the form of cash if the employee
21 left the employment before that took place.

22 So that's a distinction as well. So you have to
23 divide these into two components. 2008, where there was an
24 opportunity and, according to my client, a history of cash
25 being returned to employees under certain circumstances. And

1 you have the prior period where you -- money was taken,
2 presumably never actually invested in the stock but merely just
3 taken and held in a form that we've never been clear about.

4 So --

5 THE COURT: It's very difficult for me to deal with
6 what you just said for purposes of today's hearing. You're
7 making a hearsay statement as counsel. I don't know how to
8 deal with it. It's not evidence of anything yet. I don't know
9 whether or not you're proposing a declaration of your client to
10 supplement the record with respect to this issue with some
11 specificity as to how it ties to the claim.

12 MR. MICHAELSON: Yes, I am, Your Honor. I gave
13 thought to that issue because I realized that my statement or
14 my client's statement is not evidence that this Court can rely
15 on to make a ruling. But there are two options here. One is a
16 declaration from my client. And the second is, in the context
17 of this contested matter, applying the adversary rules and
18 allowing depositions to be taken to determine what money was
19 spent -- how -- where the money was put, under what terms and
20 conditions money may have been released that may have indicated
21 that it was something other than what it might have been
22 labeled or appeared to be.

23 So I think there are legitimate questions about the
24 interaction between the parties. I think, expanding on that,
25 there's a legitimate question as to this whole issue of whether

1 a bargain was struck. We've heard a lot of talk about their
2 having been -- this being bargained for. And you've heard me
3 say and my client has said and others have said that there was
4 no bargain. This was a unilateral imposition of a new policy
5 in which they had no say. The debtor has a slightly different
6 view of that. Well, that's a factual question that, from the
7 presentations today, I would find it very difficult for the
8 Court to opine on.

9 But this may be fundamental to the very issue that
10 we're talking about in the spirit of what Judge Gonzales said
11 in Enron, that there are -- he said he couldn't imagine that
12 there were circumstances. But he didn't preclude them. And he
13 also said that his ruling was limited to those specific facts.
14 I think that we may be in that very narrow range where we have
15 an opportunity here to reach a different conclusion. But I
16 think that the facts have not been fully investigated and
17 expanded upon and certainly not sufficient to inform the Court,
18 in my view, of what really went on in this case.

19 THE COURT: Okay.

20 MR. BERNSTEIN: Thank you.

21 MS. SOLOMON: Good afternoon, Your Honor. Lisa
22 Solomon. I represent eight claimants: Mr. Gordon Sweely,
23 Vincent Primiano, Riccardo Banchetti, Giancarlo Sarrone, Harsh
24 Shah, Philippe Dufournier, Charlie Spero and Tim Burke. The
25 individuals that I represent in this case, Your Honor, some of

1 them worked in the United States and some of them worked
2 outside of the United States. So the individuals who worked in
3 the United States have asserted claims under RSUs. And the
4 individuals who worked outside the United States have asserted
5 similar claims under the contingent stock arrangements.

6 Your Honor, the claims that have been asserted here,
7 and the debtors haven't contested this, are claims for unpaid
8 wages. They were issued under a stock incentive plan for all
9 of the claimants. And the claim for unpaid wages arises under
10 Delaware law as well as the Bankruptcy Code. The stock
11 incentive plan which hasn't been referred to in any of the
12 debtors' documents is a pivotal document here, not necessarily
13 the grant agreements which were issued after the stock
14 incentive plan. And the stock incentive plan in paragraph 8
15 specifically provides that nothing herein shall give any
16 participant any rights that are greater than those of a general
17 creditor of the company.

18 Your Honor, it's submitted that -- it's acknowledged
19 here that they did have the rights of a general creditor of the
20 company and that they did not -- and that the claimants did not
21 have rights as shareholders. In fact, that paragraph 8 goes on
22 to provide further that the participants shall not have any
23 rights of a shareholder of the company with respect to shares
24 subject to an award until the delivery of such shares.

25 The claimants have claims for unpaid wages. And in

1 fact, Your Honor, it's our position that certain parts of the
2 claim are entitled to priority wage treatment under the
3 Bankruptcy Code and that their wages under Delaware law as
4 well. Your Honor, it's been submitted that this is very
5 significant here because, as far as I know, there isn't any
6 prior case law that has construed Section 510(b) and, in
7 particular, the Enron case did not address this issue where a
8 claimant was entitled to priority wage treatment and at the
9 same time, it was found that that claimant's claim could be
10 subject to subordination under the Bankruptcy Code under
11 510(b).

12 THE COURT: What's the basis for asserting that any of
13 your clients are entitled to priority wage treatment?

14 MS. SOLOMON: Because the RSUs and the CSAs that were
15 issued were on account of services rendered within 180 days of
16 the bankruptcy filing. That's the basis, Your Honor. And it's
17 submitted with respect to other case law that has been cited in
18 the debtors' filings dealt with terminated employees not
19 current employees who are continuing to render services. And
20 that Congress found it appropriate to grant priority status to
21 claimants for their services rendered is significant here.

22 THE COURT: Well, how do you deal with the distinction
23 between the payment of cash and the payment of the right to
24 receive equity?

25 MS. SOLOMON: Well, first, I would note also that

1 while the debtors were not under an obligation, the debtors
2 reserved the right to pay in equity or cash under the stock
3 incentive plan. And so, the claimants were not guaranteed just
4 that they would receive equity upon the satisfaction of the
5 conditions. But it was possible that they would never receive
6 any equity. And whether or not the debtor was obligated or it
7 was in the discretion of the debtor, I don't consider it to be
8 that significant. The point is that these claimants did not
9 know at any time that they would be an equity security holder
10 of the company.

11 What we're talking about here, Your Honor, is
12 basically a categorical reordering of a priority claim that was
13 granted by Congress under the Bankruptcy Code. And I say
14 categorical reordering because it's the same set of facts that
15 give the claimants a priority claim that makes their claim
16 according to the debtors subject to subordination under Section
17 510(b). And it's submitted that there's no basis for a
18 categorical reordering of their priority claims.

19 The fact that their claim is tied to the price of the
20 stock doesn't change the underlying nature of the claim. And
21 that is, it's a wage claim for unpaid services, for services
22 that were rendered but that they didn't receive payment on.

23 Your Honor, I would point out also that the factual
24 background with regard to various of the claims is different.
25 And some of my claimants started employment with Lehman --

1 Lehman Holdings more than twenty years ago. And at that time,
2 Your Honor, there was no equity package whatsoever. They were
3 privately owned. They were owned by American Express. And
4 over the years, that changed and slowly equity compensation was
5 worked into the formula. And the portion of their equity
6 compensation was increased over time. But this isn't a
7 situation, as has been described by the debtors, where, from
8 day one, there was a contract in place and my clients agreed to
9 certain terms. That's just not what happened here.
10 Eventually, at the end of the day, their compensation was based
11 in part -- was up to the equity comp -- a portion was up to
12 practically forty percent. But that was very, very different
13 from what it started out at the beginning of time. And if they
14 were to leave at any point in time, they would therefore have
15 forfeited the prior equity compensation that had been
16 previously earned. And while, Your Honor, I don't consider
17 that necessarily to be involuntary servitude, I don't, at the
18 same time, consider that to be a fully bargained for agreement.
19 I'd like to point out further, Your Honor, that the
20 terms of the RSUs and the CSAs were universal within Lehman.
21 And this was not a situation where there was a single private
22 agreement reached with one particular claimant. But this was
23 the universal employment policies of the company. And I
24 believe that that makes this case very different from any of
25 the prior cases that have been cited dealing with terminated

1 employees and severance packages that they may have reached
2 with the debtor in those particular cases. And I would also
3 point out that the claims that have been asserted here are not
4 based on diminution of value of stock. They're not damage
5 claims for diminution of value of stock. They're wage claims
6 for the wages that my clients had earned but were not paid
7 because the debtor deferred it and then said I'll pay it in the
8 equity portion down the road.

9 So to the extent that which Cong -- 510(b) is very
10 clear, the debtors have to show that we have a damage claim
11 arising from purchase of a stock. We don't have that here.
12 It's not based on diminution of value of stock but rather based
13 upon the compensation that my clients earned prior to the
14 bankruptcy filing.

15 I would also point out that, Your Honor, in certain
16 cases there was guaranteed compensation that was put off in
17 terms of the equity compensation. It was described as
18 guaranteed compensation -- and this is in our papers, Your
19 Honor. It was described as guaranteed compensation and
20 referred to as guaranteed compensation. In one or more
21 contracts between my clients and the debtor. And not only is
22 that compensation now not being paid to them, but they're told
23 that they can't even make a claim and get the same rights as
24 general creditors in the company for that guaranteed
25 compensation. That's it, Your Honor.

1 THE COURT: Okay.

2 MS. FLACKMAN: Good afternoon, Your Honor, and members
3 of the court. My name is Cynthia Flackman. I'm representing
4 myself, I'm not a lawyer, in the matter of claim 4709. And I
5 submitted a response to the 131st objection to my claim. And I
6 believe I made a number of meritorious statements and stated
7 facts related to certain legal precedent in that filing and the
8 filing of my response. But I do not want to reiterate that
9 filing because of my respect for your time, Your Honor.

10 I would simply like to state that notwithstanding the
11 fact that the debtors' objection has aptly described the nature
12 of equity securities and related instruments that may be
13 broadly categorized as equity securities, the debtors' 131st
14 omnibus objection to claims is without merit with regard to my
15 claim because it is entirely based on the intended form of
16 payment and does not address the substance of the liability to
17 me as creditor for unpaid wages.

18 Whereas, as creditor, I adjusted the amount of the
19 RSUs that were published in the LehmanLive RSU summary, and I
20 specifically removed the 2008 grant that was not incorporated
21 in any of my compensation statements, the RSU values that I am
22 categorizing as my compensation were stated as my compensation
23 for the year, salary plus bonus. There's a footnote about RSUs
24 in the statement and any amount of the bonus that's paid in
25 cash is stated and separated from the equity.

1 But whereas the compensation total was presented in
2 this way, regardless of the categorization of equity and the
3 kinds of -- the types of precedents that deal with these types
4 of securities, I don't think it really addresses the other side
5 of the balance sheet, my claim. The consideration that would
6 be offered to settle my claim and whatever that consideration
7 is, it has a variety of financial characteristics but I don't
8 think it settles my claim. And because I made this adjustment,
9 I feel I have distinguished my compensation claim from the
10 generalities of RSUs.

11 I would also like to state that it was somewhat
12 painful to see references to Enron and WorldCom. Excuse me,
13 Your Honor. I find Lehman as an entity that I always felt
14 tried to do the right thing. And legal precedents can be set
15 that are either good or bad. And sometimes we can rely on bad
16 precedent and come out with bad laws or bad decisions. But
17 there always was a remedy starting with Magna Carta and the
18 foundation of our laws was a remedy, equitable remedy. And I
19 would like to respectfully petition the Court to grant an
20 equitable remedy to me in full settlement of my claim.

21 My claim was part of reasonable compensation. It's
22 not millions of dollars. If you were to look at the
23 compensation that a person would be paid for the job and the
24 hours that I worked, I feel my claim was very reasonable. And
25 I would like to ask for an equitable remedy. And I have

1 brought paperwork which I'd like to approach the bench with to
2 submit my request for an equitable remedy which I think
3 distinguishes me from the other claimants.

4 THE COURT: Before you hand that to me, I just want to
5 make sure that the debtor knows what it is that you're handing
6 me.

7 MS. FLACKMAN: Oh, yes. I have it for them also. And
8 I have it for the --

9 THE COURT: Okay. I'll take a look at it.

10 MS. FLACKMAN: Sorry.

11 THE COURT: Okay. Thank you.

12 MR. KENNEY: Your Honor, my name is Arthur Kenney. I
13 am not a lawyer. I was a twenty-five year salesman at Lehman
14 Brothers and a commissioned salesman at that. Similar to the
15 first couple of colleagues who -- or representatives who spoke,
16 again, I was a commissioned salesperson. And like my
17 colleagues, a portion of that commission was accrued to
18 purchase RSUs at the end of the year when the price would be
19 set. That was similar to what I think of it as a convertible
20 debt obligation with the conversion price to be determined at
21 the end of the year. On the first of July, 2008, twenty
22 percent of the accrual was used to purchase, in my case,
23 1416.06 RSUs at a price of 20.96.

24 My claim, as my colleague who just preceded me,
25 consists of the accrued commissions minus the amount of the

1 commissions that were granted in RSUs for that July 1st
2 purpose. So my claim is the net outstanding accrued earned
3 commissions that I argue should not be reclassified as equity.
4 I assert that these owed commissions are -- remain as debt as
5 convertible debt which cannot be converted. So that's the
6 claim that I am making.

7 THE COURT: Okay. Thank you.

8 MR. KENNEY: Thank you for your time.

9 MR. PLASKETT: Good afternoon, Your Honor. I'm Rodney
10 Plaskett. I'm one of the claimants. I actually did practice
11 law for twenty years -- for ten years. For the last nineteen,
12 I've been an institutional equity research salesperson.

13 I was going to ask for your indulgence if you might
14 read back the first couple of sentences of your statement that
15 you had earlier today.

16 MR. BERNSTEIN: I'm not exactly sure what you're --

17 MR. PLASKETT: Just the first couple of --

18 THE COURT: What is it you're asking for?

19 MR. BERNSTEIN: What are you trying to --

20 MR. PLASKETT: I'm trying to recall your first couple
21 of statements which I did not feel were at all true.

22 MR. BERNSTEIN: "The objection seeks to reclassify the
23 claims as equity interests. Part of the commencement, LBHI
24 granted RSUs to employees as part of their compensation in
25 order to enable employees to participate in the increased value

1 of Lehman by enabling them to receive common stock. The RSUs
2 bear the hallmarks of equities. The holders' benefit an
3 increased value of the corporation, receive dividends and bear
4 the risk of failure of the corporation.

5 MR. PLASKETT: Thank you. The compensation I'm
6 seeking today is a defined amount. It's about 60,000 dollars.
7 And that was not compensation to me. That was -- that Lehman
8 gave to me. That was commissions that I earned. I was not a
9 salaried employee receiving a bonus. Okay, Rodney, you did a
10 great job this year. On top of your salary, we're going to
11 give you X dollars. No. Every day I come in, it's zero. And
12 then I earn X; I'm paid Y. And out of that Y is taken a
13 portion. It's called a holdback. That holdback can be used
14 for whatever the employer deems fit. If I have a bad trade
15 that goes against me, they can take some of that money. If I
16 misstate how a trade should be executed, they can take that
17 money. If I do a deal and there's a penalty bid -- a penalty
18 bid is when one of my clients decides to flip a hot stock.
19 They can take that money.

20 So Lehman goes bankrupt and I get my monthly
21 statement. And I see I have made X. And there's another line
22 that's got 60,000 dollars in it. And that 60,000 dollars is
23 definable as cash and as a holdback. It's my compensation.
24 Every single commissioned salesperson on that desk can point to
25 a number that was still cash.

1 Lehman goes under. We get an e-mail from Barclays:
2 accept or decline employment. We accept employment. We go to
3 our management. Okay, guys. We realize the RSUs may be zero
4 but where's our defined commissioned money we saw on our last
5 statements? I don't know. Don't ask us about it. So, I mean,
6 why? None of the management changed. They just changed from
7 being Lehman management to Barclays management. Where was that
8 sum of money? It's definable; it's in writing. I submitted it
9 with my petition and I would really love to get it because I
10 could have lost it for trading errors, for penalty bids, for
11 whatever Lehman -- if Lehman wanted to give me Hess trucks for
12 Christmas, they could have said, well, that's what we bought
13 with that money. But that money was definable compensation,
14 definable commission revenue.

15 RSUs were not part of the bargain of my working at
16 Lehman. As a commissioned salesperson, once again, you started
17 at zero and you earned your commissions every day, every month.
18 If I had been let go without cause, I'm willing to state that,
19 Rodney, we're going to scale back this month. So here's the
20 money we were holding back from you because it's not time to
21 deliver RSUs. Thank you very much, Lehman management. That's
22 fair. I earned it. You see it. It's right there. It's not
23 time for RSUs so it must be in cash.

24 THE COURT: Can I ask you a question about --

25 MR. PLASKETT: Yes, sir.

1 THE COURT: -- at least how your situation with Lehman
2 was documented? Was there a set of procedures or terms and
3 conditions of your employment as a commissioned salesman that
4 laid out what Lehman could do with funds that were held back
5 from your salary?

6 MR. PLASKETT: No. It was the opportunity that maybe
7 we'll give you RSUs. But other than that, no. So any monies
8 that I earned, they could have used in any manner they desired.
9 That's the power of that man -- of any management, often. But,
10 no. There was no contract other than you may have a -- you'll
11 have a holdback, could go with the RSUs, could be used if you
12 screw up, if you blow a trade. And those things did happen.

13 THE COURT: Okay. So do I understand that, at least
14 in your experience, and perhaps this is similar to the
15 experience of other commissioned sales personnel, that there
16 was a separate accounting sheet that was created on a monthly
17 or quarterly basis that laid out what you had earned in
18 commissions and that set aside a certain amount which was
19 disclosable on the form that showed what was being held back.
20 Is that correct?

21 MR. PLASKETT: Yes, sir.

22 THE COURT: And was it ever the practice of Lehman, to
23 the best of your knowledge, for the funds being held back to be
24 paid to the commissioned salesperson in cash at the end of a
25 year? Was it ever a fund that you could tap into?

1 MR. PLASKETT: I could not tap into it.

2 THE COURT: You did not?

3 MR. PLASKETT: I could not --

4 THE COURT: You could not.

5 MR. PLASKETT: I could not tap into it.

6 THE COURT: And is it true that no one could?

7 MR. PLASKETT: No. Management could tap into it.

8 THE COURT: No. But none of the commissioned
9 salespeople had a right to tap into the fund?

10 MR. PLASKETT: Correct --

11 THE COURT: Okay.

12 MR. PLASKETT: -- to the best of my knowledge.

13 THE COURT: All right. Thank you.

14 MR. PLASKETT: So I stand here once again, reiterating
15 my claim for a definable amount of cash that was earned
16 commission, that was income that I feel has been, first of all,
17 channeled to import -- to incentivize the management that was
18 retained by Barclays as commissioned salespersons, none of us
19 received retention bonuses. There were two sales forces at
20 Lehman. One which I was in was Little Markets; and another
21 which was called Portfolio Sales. They were supposed to cover
22 the top 200 accounts in the country. And they were on salary
23 plus bonus. Many of those individuals received retention
24 bonuses. None of us in commission sales received a dime.
25 So, in other words, I do feel as though I've been

1 defrauded because the amount of money is quite clear has been
2 with my file. I don't have the financial wherewithal at this
3 time to retain counsel. I have to act as my own. But I do
4 hope that as you review the many commission salespersons'
5 complaints that you will look at them from the standpoint of
6 those who did hire counsel to extract favorable case law. And
7 at least for those of us who decided to take the time to put in
8 a claim, to give it the benefit of some of those common
9 filings.

10 I believe that really does sum up what I had to say
11 here today and I really thank you for your time.

12 THE COURT: Okay. Thank you very much. Before I hear
13 from the next individual, based upon what I've heard to this
14 point, I'm concerned about the lack of a formal evidentiary
15 record here. And I don't think we're going to solve the
16 problem this afternoon. It seems to me that this is taking on
17 a character that's somewhat similar to a matter that I recently
18 decided in a totally different context in the LBI SIPA case
19 that involved -- and it's a reported decision, claims with
20 respect to so-called TBA contracts. And I'm thinking of it
21 because, in that setting, I at least had a record because the
22 parties stipulated that certain declarations and attachments to
23 the declarations could be accepted as reliable and authentic
24 evidence that I could refer to for purposes of decision making.
25 And what I am finding as a result of this hearing up to this

1 point, and we're not done, is that there are issues of fact
2 that are being referenced in a very credible way by individuals
3 who are not under oath, who are not subject to cross-
4 examination and who are in a position to influence the Court.

5 So I'm troubled by where we are right now in this
6 proceeding just as a pure matter of case management and
7 administration. I haven't opened up this envelope which was
8 handed to me but I will. But I'm not sure what I'm supposed to
9 do with it once I read it.

10 I think, as a result, that we need to do a better job
11 managing this process so that I can make some judgments about
12 particular claimants within what previously has been
13 characterized as a class. And it seems to me that I have
14 already heard enough to know that there are subclasses within
15 the class and that one subclass would be commissioned
16 salespeople who had funds held back and accounted for but, as
17 just stated, did not have the ability to access those funds but
18 nonetheless those funds represented what they could, with a
19 straight face, characterize as earned commissions.

20 I also have heard just before the lunch break from an
21 attorney who represents individuals who had been working at
22 Neuberger Berman before the acquisition and presumably are
23 still with Neuberger Berman and who explained their terms and
24 conditions of employment were changed as a result of the
25 acquisition by Lehman but that by virtue of the economic

1 reality of their practices, were held captive by economic
2 coercion. It wasn't anything that willful; it was just
3 circumstantial.

4 I think that both of these examples, and I'm not
5 limiting the field to these examples, raise some questions as
6 to what the facts actually are. And it further raises a
7 question in my mind as to whether we can deal with this in so
8 undifferentiated a way as we have started to deal with it this
9 afternoon. So that's my mid-course reaction to what I've heard
10 so far in terms of whether or not we're in a position to make
11 some decisions. And I don't mean to cut anybody off. I think
12 that we've reached just about five minutes to 3. And I'm going
13 to have to take a break for the chambers conference which will
14 be starting at about 3:00. Is there someone --

15 UNIDENTIFIED SPEAKER: Yes. Your --

16 THE COURT: I see someone standing --

17 UNIDENTIFIED SPEAKER: Right.

18 THE COURT: -- in reference to --

19 UNIDENTIFIED SPEAKER: Your Honor, that chambers
20 conference -- the parties are talking and then respectively
21 talking to their business principals --

22 THE COURT: Could you come forward --

23 UNIDENTIFIED SPEAKER: Sure.

24 THE COURT: -- only because I can barely hear you.

25 UNIDENTIFIED SPEAKER: Your Honor, the parties are

1 talking among themselves. We started talking about twenty
2 minutes ago. And now they're respectively reaching out to
3 their business principals to see if we can get some kind of
4 framework to present to Your Honor at 3. And given that
5 ongoing discussion, we wondered if we could postpone it ten or
6 fifteen minutes if that works for Your Honor.

7 THE COURT: You can postpone it for a half hour.

8 UNIDENTIFIED SPEAKER: Okay.

9 THE COURT: You can postpone it for forty-five
10 minutes. I don't really care.

11 UNIDENTIFIED SPEAKER: I don't think we need more
12 than, say, twenty minutes. So if you want to say a half hour
13 to be safe.

14 THE COURT: Let's call it 3:30.

15 UNIDENTIFIED SPEAKER: Okay.

16 THE COURT: And are you gathering in the conference
17 room across from my chambers?

18 UNIDENTIFIED SPEAKER: We can do that. We are in the
19 hall right now.

20 THE COURT: Why don't you ask my courtroom deputy to
21 open up the conference room which is across the hall. You can
22 gather in there and I'll join you there at about 3:30.

23 UNIDENTIFIED SPEAKER: Okay. Great. And where can I
24 find your courtroom deputy?

25 THE COURT: Just walk into the door that says

1 "Chambers Entrance".

2 UNIDENTIFIED SPEAKER: Okay. Thank you, Your Honor.

3 (Pause)

4 THE COURT: Okay. We've just been given a half hour.
5 I think we should continue to hear from those individuals who
6 are gathered here now and who wish to be heard.

7 MR. KENNEY: If I could just put an addendum to my
8 colleague, Mr. Rodney? You asked if there was a statement
9 that's an example of a statement that -- and may I show it to
10 you? And you see there are --

11 THE COURT: I appreciate that there is such a
12 statement and that only serves to further emphasize in my mind
13 the procedural concern that I have which is that we don't have
14 an established evidentiary record to deal with some of the
15 ancillary materials that are being present. And we're going to
16 need to do that before I can do anything with the information
17 that's being developed.

18 MR. SCHAGER: Good afternoon, Your Honor. Richard
19 Schager for claimant, Michael McCully. And I'm just going to
20 make a very quick point 'cause I'm quite happy with the
21 procedure Your Honor outlined about subsequent sequential
22 papers to be filed before the next hearing.

23 I thought the fatal flaw in omnibus motion 130 was the
24 way it glossed together and glossed over differences among
25 different plans including stock option plans, the contingent

1 stock awards and the restricted stock units all of which are
2 significantly different. I think virtually everything that has
3 been said today has dealt with RSUs. I thought I heard one
4 reference to a stock option plan but it wasn't clear to me. So
5 I was going to ask the Court to -- I was going to ask the Court
6 respectfully to clarify whether to the Court's knowledge the
7 130th omnibus motion still deals with stock option plans and
8 contingent stock awards as well as RSUs or has the relief been
9 granted for everything except the restricted stock units, the
10 RSUs?

11 THE COURT: We'll have to ask debtors' counsel for
12 that --

13 MR. SCHAGER: And if they can't be addressed today
14 then I think it has -- I would just flag that I think it's
15 something that has to be addressed in the papers.

16 THE COURT: We'll have to ask debtors' counsel to
17 clarify that.

18 MR. BERNSTEIN: Your Honor, the -- it was not entirely
19 clear to us from the proofs of claim if parties were claiming
20 for stock options, contingent stock awards or RSUs. They
21 generally attached -- generally, statements were attached that
22 said how many RSU units they held whether they acquired those
23 through the equity awards program, the contingent stock award
24 program. I think the end result is the same. They end up with
25 RSUs. So the objection addressed everything that was included

1 on the proof of claim attached to those -- included in those
2 proofs of claim. So if there were stock options included on
3 those and the party had ended up with RSUs, those obviously
4 were included. And if they had something different, that was
5 also included in the objection. So no relief yet has been
6 granted here today but those -- all of those items on those
7 proofs of claim were intended to be subject to the objection.

8 MR. SCHAGER: Okay. While I'm -- subject to making
9 one brief point, Your Honor, I'd say I'd wait until the next
10 round of briefing. But I think there are -- the Court is going
11 to find that there are, in fact, significant differences
12 between stock options that are granted which represents a real
13 physical act and a restricted stock unit that just, by way of
14 one example, a stock option has a tax consequence. And it
15 might not be taxable at the time of the grant but that's
16 subject to provisions of the Internal Revenue Code. Restricted
17 stock units were never taxed. And it's not clear that there
18 was anything that transpired that would constitute taxable
19 compensation. I think that's going to be the type of
20 difference in these types of plans that has to be addressed.
21 Having said that, though, I'm happy to wait until the next
22 round of briefing.

23 THE COURT: Okay.

24 MR. SCHAGER: Thank you.

25 MR. SHOTTON: Thank you very much, Your Honor. My

1 name's Paul Shotton. I'm here representing myself as a former
2 Lehman Brothers employee. The offer letter of employment which
3 constitutes the only employment contract I've had with the firm
4 guaranteed a total compensation amount as a dollar figure for
5 the first year of employment. The letter went on to explain
6 that in subsequent years the figure would be variable but
7 referencing the figure for that first year to establish a run
8 rate. And it said that solely at the firm's discretion, part
9 of the compensation made be paid in the form off conditional
10 equity awards. It went on to describe those as being RSUs or
11 stock options or of a conditional equity award pursuant to the
12 employee equity award program then in effect.

13 Now the terms of the program including the proportion
14 of conditional equity changed from year to year solely at the
15 firm's discretion. I was never consulted nor asked to approve
16 that. And bonus amounts and amounts of equity which were
17 determined at the end of each fiscal year were fixed in dollar
18 amounts not as a particular fixed number of shares and,
19 likewise, when stock actually vested, tax which was due to the
20 Internal Revenue -- to the Treasury -- taxes withheld at source
21 automatically by the firm.

22 So it's quite clear from the contract letter that the
23 firm viewed the conditional equity awards, cash salary and cash
24 bonuses as being completely fungible quantities. And the
25 deferred equity portion was used solely or principally as an

1 employer retention device.

2 The equity awards programs make clear that the RSUs as
3 counsel admits they are immediately convertible into cash
4 albeit at the behest of the firm in the event of a change of
5 control. So I believe that the argument that RSUs are only
6 classifiable as equity is fundamentally incorrect.

7 And in summary, I'm pursuing a wage claim seeking just
8 compensation for services rendered to the firm in good faith.

9 THE COURT: Okay. Thank you.

10 MR. HUTTON: Good afternoon. My name is Randall
11 Hutton. I'm not an attorney. My claim number is 14023 which I
12 initially filed in September 2009.

13 I filed a response on May 16th of this year to the
14 debtors' 118th omnibus objection to reclassify my proof of
15 claim to equity interest. In doing so, I reduced the amount of
16 the initial claim that I had to only reflect deferred
17 compensation under an employment contract that I had with the
18 debtor. Per my amended claim, I disagree with the debtors'
19 assertion and their objection that the conditional equity
20 awards I earned in 2006 and 2007 under the employment contract
21 is security under Section 510(b) Bankruptcy Code.

22 I further disagree with the debtors' omnibus reply
23 filed on December 15th to the general omnibus responses as it
24 failed to address my specific claim and my response. As a way
25 of background, I had signed an employment contract on December

1 10th, 2004 with the debtor which I had included in Exhibit A of
2 my response. The contract specifies a consideration and
3 compensation for my services throughout its term which was
4 calculated annually through a defined formula. Per the
5 contract, Lehman had the discretion to pay a portion of
6 compensation in the form of conditional equity awards which is
7 the amount of my amended claim. The debtor had filed for
8 bankruptcy before any of these were paid to me.

9 The employment contract called for an exchange of my
10 services for a calculated dollar amount of compensation in 2006
11 and 2007. Given this was a contractual obligation for a
12 calculated dollar amount and only a calculated dollar amount,
13 the conditional equity portion I received was in form of
14 compensation only, not necessarily ultimate value. My contract
15 states in Section 3 that a portion of my compensation could be
16 paid in the form -- and underline "form" -- of conditional
17 equity awards. This could be interpreted to referring to the
18 deferral investing aspects related to conditional equity but
19 not necessarily its ultimate value. In other words, Lehman was
20 not contractually obligated to hold a certain number of shares
21 to me but rather, needed to provide the amount of stock when
22 vested to contractually fulfill the calculated dollar amount
23 owed under the contract.

24 To illustrate this point, assume that Lehman did not
25 file for bankruptcy but instead its stock increased in value

1 substantially. When the conditional equity was due to be
2 delivered to me pursuant to the terms of the contract, Lehman
3 could limit the amount of shares delivered to me to the
4 contracted amount of compensation in my claim. Even though the
5 market value that those shares -- may be much higher, Lehman
6 could argue that under contract and general contract
7 principles, it is only responsible for a contracted amount and
8 not the higher equity market value amount. Thus, I did not
9 necessarily have the upside of an equity investor. Given that
10 the conditional equity I received under the contract was capped
11 under a contract amount and under general contract law
12 principles, it does not meet the Bankruptcy Code definition of
13 "security" as defined in Section 501(b) as the debtor alleges.

14 The case law is, I think, the similar Enron court
15 opinion regarding employee claims filed on May 2nd, 2006 where
16 Judge Gonzales describes the absolute priority rule in saying
17 that "In return for the right to share in the profits of the
18 corporation, securities holders must also accept the risk of
19 insolvency and therefore precluded from sharing in the
20 distribution of the estate until all general creditors have
21 been satisfied. Security holders thus accept greater risk in
22 return for the opportunity of a greater reward whereas general
23 creditors' bear less risk commensurate with the fixed nature of
24 their award.

25 Given the conditional equity that I had under my

1 contract was contractually capped at a calculated amount, it
2 compromised any right to share in profits in Lehman. Per these
3 reasons, the conditional equity amount should not be considered
4 a security per Section 510(b) as the debtor alleges but should
5 be a general unsecured claim against the debtor. Thus, I
6 respectfully petition the Court to deny the debtors' request to
7 reclassify the claim as an equity interest.

8 THE COURT: Thank you.

9 MR. HUTTON: Thank you.

10 THE COURT: Is there anyone else in the courtroom who
11 wishes to be heard? All right. That means that those of us
12 who are still on the telephone will have a chance to express
13 themselves. But the first thing that I'm going to ask is that
14 you at least identify yourself by name if you wish to be heard
15 at this time.

16 MR. BOYAJIAN (TELEPHONICALLY): Yes. Hello?

17 THE COURT: Listening.

18 MR. BOYAJIAN: Yes. This is James Boyajian, law
19 office of A. James Boyajian in Los Angeles on behalf of Jeffrey
20 Wardell, claim number 24545.

21 THE COURT: All right. You're on the list. Anybody
22 else?

23 MR. CARRAGHER (TELEPHONICALLY): Yes. This is Dan
24 Carragher for claimant, Fabio Liotti, L-I-O-T-T-I. And I would
25 like to be heard. It's claim number 25895.

1 THE COURT: I have -- that's two. Is there anybody
2 else on the line who wishes to be heard?

3 MR. COHEN (TELEPHONICALLY): Darian Cohen from Los
4 Angeles representing myself. The claim number is 16153.

5 THE COURT: Could I have your name again, please?

6 MR. COHEN: Sure. It's Darian, D-A-R-I-A-N, Cohen,
7 C-O-H-E-N.

8 THE COURT: Anybody else?

9 MR. JACOBSON: Lars Jacobson, L-A-R-S,
10 J-A-C-O-B-S-O-N, claim number 24335.

11 THE COURT: So far I have four. Anybody else? Okay.

12 MR. GRAN (TELEPHONICALLY): This is Michael Gran.

13 THE COURT: Michael -- what's your last name?

14 MR. GRAN: G-R-A-N --

15 THE COURT: I couldn't hear your last name.

16 MR. GRAN: G-R-A-N, as in November.

17 THE COURT: And are you a lawyer or speaking for
18 yourself?

19 MR. GRAN: For myself. Claim number 23900.

20 THE COURT: Okay. Do we have a complete list of five?
21 Apparently so. We'll go in the order in which people spoke up.
22 The first is the attorney who represents Mr. Wardell.

23 MR. BOYAJIAN: Thank you, Your Honor. The Code aims
24 to protect employees as priority creditors. Jeffrey Wardell
25 was a broker in LBHI's San Francisco office who has a 507(a)

1 priority claim for \$50,638.80 for the extent admissible under
2 the 507 priority status and for the rest of it by general
3 unsecured claim. These amounts are for unpaid wages, benefits
4 and compensation. The money was taken out of his paycheck by
5 debtor LBHI in anticipation of issuing restricted stock units
6 at the end of November of 2008 under the 2008 equity award
7 agreement. The RSUs ultimately could not be issued and do not
8 exist. He got no cash and no RSUs.

9 We ask the Court to deny debtors' objection because
10 this claim is valid for the following two reasons. Despite
11 Your Honor's mention of the shifting of burden earlier, we
12 believe that debtors' objection does not refute the essential
13 allegations about this claim and therefore does not shift the
14 burden to prove validity of the claim.

15 And secondly, even if the burden has shifted to us,
16 this claim is valid based on the preponderance of evidence
17 because it arises out of unpaid compensation and requires
18 restitution.

19 First, the debtors failed to shift the burden because
20 they cite no relevant authority to refute this claim. The case
21 turns, as Your Honor mentioned earlier, on whether not granted
22 RSUs are equity securities. None of the cases cited in the
23 objection or the reply briefs are relative to this issue. In
24 re Enron deals with stock options and phantom stock. To posit
25 three other examples, in the matter of Baldwin-United Corp.

1 deals with stock option claimants; Curreri v. Jopps (ph.) deals
2 with preferred stock warrants; and Einstein Noah Bagel Corp.
3 deals with puts.

4 None of these cases as cited by debtors deal with
5 RSUs. RSUs are a completely different animal, Your Honor.
6 They're not equity securities as defined in Section 101,
7 paragraph 16. Even had they issued and invested because RSUs
8 are different from stocks, puts, warrants, phantom stocks and
9 stock options, all of these equity interests give a present
10 right to the risks and benefits of equity ownership. RSUs give
11 only a conditional right to convert to an equity interest at a
12 later point in time and not a present equity interest.

13 Also, unlike these other equity securities, RSU
14 holders do not enjoy the hallmarks of equity ownership
15 including benefiting increases in entity value, building rights
16 or transferability.

17 To quote directly from the 2008 LBHI equity award
18 program, RSUs are defined on page 16 as "the conditional rights
19 received one share of Lehman Brothers common stock three years
20 after the grant date on November 30, 2011. Generally, RSUs
21 cannot be sold, traded, pledged or transferred during that
22 three year period."

23 Unlike most securities, RSUs are easily forfeitable
24 and unvested rights to buy stock many years later only if
25 several contingencies on the -- and as we have heard earlier

1 this morning, Lehman reserved the right to pay out cash instead
2 of issuing those RSUs. So it's not even certain whether they -
3 - whether the employees will be getting the benefit of RSUs or
4 future common stock if converted. Therefore, Section 510(b)
5 does not mandate that this claim have the same priority as
6 common equity in LBHI.

7 Not to get to your question, Your Honor, and to the
8 heart of the matter, the Enron case and all of the other cases
9 cited in support of mandatory 510(b) subordination should be
10 distinguished from this claim because they involved stocks and
11 options that had vested. As to footnote 3 in Enron, it is
12 clear that this opinion applies only to stock options. And I
13 quote from that footnote: "To the extent that stock options
14 necessarily implicate the purchase or sale of a security, it is
15 doubtful that any stock options can be so denied."

16 As you can see, RSUs are not stock options and Enron
17 has nothing to do with RSUs. Even a phantom stock, which is
18 also at issue in Enron, that was not delivered was a present
19 equity interest with expectation of sharing in profits and
20 losses albeit with a deferred date of receipt for tax purposes.
21 In contrast, since respondent never received RSUs and knew of
22 the high risk of forfeiture, he did not expect to participate
23 in the firm's profits and losses.

24 Your Honor, the only two cases that are on point as to
25 the issue of whether RSUs are equity or whether they are debt

1 are FleetBoston out of the district of Massachusetts and Diab
2 v. Textron out of the eastern district of Michigan both of
3 which are cited in my response brief. These cases effectively
4 state that RSUs are not equity like common stock shares or
5 stock options. A conditional promise to grant a possible
6 equity stake in the future is not a present equity interest.

7 Moreover, debtors do not cite any contract provisions
8 which require subordination under 510(a). On pages 8 and 9 of
9 their reply brief, the debtors mistakenly suggest that the 2008
10 equity agreement contains a subordination agreement to treat
11 the RSUs as "arising from the purchase or sale of a security
12 like common shares in LBHI in the case of a bankruptcy". This
13 term appears only in the 2003 and 2004 equity agreements. It
14 does not appear in the 2008 equity award agreement which
15 governs the amount disputed in this claim. Nothing in the 2003
16 and 2004 agreements is incorporated by reference into the 2008
17 agreement. The 2008 agreement that debtors attached in Exhibit
18 B of their reply brief does not even mention the word
19 "bankruptcy". The fact that this language was removed
20 altogether from the 2008 agreement goes to indicate that the
21 parties agreed they would no longer subordinate RSUs as equity
22 in the case of a bankruptcy.

23 This brings me to my final point, Your Honor. And
24 I'll keep it a quick one. As to my second point, this
25 arises -- this claim itself arises out of unpaid compensation

1 and not for fraud or breach of contract damages arising out of
2 a purchase or sale of the security that was at issue in Enron.
3 There will be no other recourse to seek these unpaid
4 compensations other than by allowing these claims to proceed.
5 The evidence is clear, Your Honor, Jeffrey Wardell's sworn
6 affidavit and his compensation earnings statement show that
7 this money was withdrawn monthly and held in accrual. He had
8 no cash and no RSUs which begs the question, where is the
9 money. Can LBHI simply take cash out of an employee's paycheck
10 and keep it in return for worthless common stock that was never
11 bargained for and may have never been received through
12 conversion of the RSUs? If LBHI could not possibly issue the
13 RSUs, they owe to their employees to pay them cash back that
14 they withheld under the state labor laws of Delaware as well as
15 New York as well as under the equitable doctrine of
16 restitution.

17 My client was -- my client's money was withheld as
18 the -- it was money that was consideration for the waiver that
19 he rendered as a broker for the San Francisco office of LBHI.
20 He therefore has a legal and equitable right to payment under
21 Section 101, paragraph 5. As such, it is a valid claim. Your
22 Honor, in summary, we respectfully ask this Court to use its Section
23 105 equitable powers to cancel and set aside the 2008 equity
24 award agreement due to impossibility because it could not be
25 performed during the voluntary bankruptcy. The Bankruptcy Code

1 strongly prefers that employee claims such as Mr. Wardell's
2 remain a 507(a) priority claim. Thank you, Your Honor.

3 THE COURT: Thank you. The next is the attorney
4 representing Fabio Liotti.

5 MR. CARRAGHER: Thank you, Your Honor. This is Dan
6 Carragher from Day Pitney in Boston. I'll keep my remarks
7 brief and will avoid pretty much in the way of factual
8 recitation because I think, in light of Your Honor's comments
9 about keeping the record clear, that's probably better provided
10 in the form of a declaration to be considered at a future
11 hearing.

12 But by brief introduction, Mr. Liotti was employed in
13 London. He holds claims under RSUs that were issued in 2004,
14 5, 6 and 7 in consideration of over three million dollars of
15 compensation. And he also has asserted a claim which I'd like
16 to speak to today for 2008 compensation that wasn't paid and
17 was withheld and for which he did not receive -- in his case it
18 was CSAs because he was overseas and not in the United States.
19 And that accounts for approximately 950,000 dollars.

20 What I'd like to focus on is the debtors' argument in
21 their response, point 10 of their Appendix A, the statement
22 that the employees bargained for and willingly accepted a
23 compensation package that included the risks and benefits
24 attended to equity awards in exchange for their labor. And
25 it's true that the employees accepted certain risks, apart from

1 some of the arguments made, but there were risks of future
2 decline in value, there were risks of forfeiture of the units
3 if there was a cessation of employment and there were risks
4 because the CSAs were not registered securities with the
5 benefits that would entail. They could not be sold, assigned
6 or traded.

7 But there were other risks that the employees did not
8 accept. They did not accept a risk that when the time came for
9 the issuance of the CSAs in November of 2008 that Lehman would
10 arbitrarily change the bargain under which they had earned
11 their commission income to, for example, issue CSAs of what's
12 half of what they intended or some percent or zero. They did
13 not accept a risk that they would completely forego and waive
14 any right to compensation for the percent of their commissions
15 that was withheld which, in my client's case, was capped at
16 thirty-six percent of the annual income.

17 Getting right to the point here, they did not accept a
18 risk that in the event it became impossible for LBHI to honor
19 its part of the bargain by issuing equity awards that the
20 employees would be held to theirs. And echoing Mr. Boyajian's
21 comments, I think it's appropriate under the doctrines of
22 impossibility and frustration that the Court should fashion a
23 remedy to protect those employees. We know the remedy will be
24 an imperfect one because LBHI's in bankruptcy and creditors
25 aren't being paid in full. But the fair resolution here should

1 be to allow a claim for the portion of the commissions earned
2 but which no compensation was ever provided in any form
3 including the issuance of CSAs. For that kind of claim,
4 there's no statutory or equitable basis to subordinate it and
5 we believe it should be allowed in full. Thank you, Your
6 Honor.

7 THE COURT: Thank you. Mr. Cohen?

8 MR. COHEN: Thank you, Your Honor. I'll be brief and
9 try not to go over any of the ground that has already been
10 covered. I think, based on what the first speaker said, it's
11 hard to deny that the money was held in 2008 was never invested
12 in anything that could appreciate or depreciate in value, that
13 that didn't happen until November 30th, 2008. And, of course,
14 that never existed because of the bankruptcy.

15 THE COURT: I'm going to break in just to ask you to
16 speak up because I think your voice is fading and it may not be
17 picked up on the record.

18 MR. COHEN: Oh, I'm sorry. Is that better?

19 THE COURT: Just speak up the entire time and we'll
20 see what happens.

21 MR. COHEN: Okay. So the 2008 money that was withheld
22 clearly was never invested or theoretically invested in
23 anything that could appreciate or depreciate. So that should,
24 as the first speaker said, be treated as a priority claim.
25 However, with regard to the monies that were withheld in the

1 prior years, it says in the plan documents that the plan is to
2 remain unfunded -- and I'm not going to read the whole
3 paragraph, but it says it constitutes an unfunded plan for
4 long-term incentive compensation. And with respect to any
5 payments not yet made to a participant by the company, nothing
6 herein made shall give the participant any right that are
7 greater than those of a general creditor. It has no right --
8 we have no right as a shareholder.

9 But the point is, those plans are rather common. In
10 fact, the company I work at now has a similar plan but you can
11 invest in whatever you want. And in this case, for instance,
12 the company I work in now, if I participated in the plan, if
13 whatever I invested went up a lot -- I work for Deutsche Bank
14 now -- if Deutsche Bank were to go bankrupt, the debtors would
15 not be giving me any value of what my nonqualified plan
16 appreciated to. I would be an unsecured creditor of Deutsche
17 Bank and getting the twenty or thirty cents on the dollar that
18 everyone else gets because the money is never really invested
19 in anything. If it was, it would be like a pension plan and it
20 wouldn't be tax deferred. Part of the reason that they're tax
21 deferred is you are an unsecured creditor of the company that
22 you work for.

23 So nothing is ever purchased. It's just money that's
24 set aside in an escrow account and that's how it fits as a
25 nonqualified plan. I mean, if I had invested -- if they gave

1 us a choice of what to invest in and I invested in Apple
2 computer and it went up ten to one, would the debtors then --
3 I'm sure would then claim, hey, you don't get the value of
4 Apple, you just get -- you're just an unsecured creditor for
5 the value of the money that was taken out.

6 So it does need to be consistent in that regard. But
7 I see -- that's really the only point I'd make that there are
8 two separate things, the money in '08 and the money prior.
9 However, none of it was ever set aside in any kind of separate
10 account. It was just a general fund of Lehman. And come
11 November 30th of every year, they would issue stock based on a
12 formula of where the stock was then. Thank you.

13 THE COURT: Thank you. Mr. Jacobson?

14 MR. JACOBSON: Thank you, Your Honor. Claim 24335. I
15 think Mr. Cohen covered everything I was going to say so I
16 won't repeat anything. So thank you very much for your time.

17 THE COURT: Okay. Mr. Bran (sic), you're the last
18 one.

19 MR. GRAN: Well, seeing that I was only last, I -- and
20 also that I think that I concur with many of the other comments
21 being made is something I would say is that I definitely agree
22 with statements that have been made in theory talking about
23 RSUs --

24 THE COURT: Mr. Bran -- Mr. Bran, I don't mean to
25 break in. I'm having a very hard time following what you're

1 saying. Something is being lost in transmission. And I don't
2 know where you're calling from or what your telephone service
3 is but you're not coming through loud and clear.

4 MR. GRAN: Sorry. I'm actually calling from Jordan,
5 using the land lines here. So I am sorry I'm not on the best
6 of lines but hopefully this is better now that I don't have you
7 on speaker.

8 THE COURT: That's a lot better and I suggest that you
9 speak up.

10 MR. GRAN: Okay. I was only saying that I definitely
11 concur with those comments made earlier specifically those that
12 are related to the idea that the RSU is not a purchase of a
13 security. The economic value and the way we look at an RSU
14 economically is completely different from an equity security,
15 is a contingent payment of wages that are earned which over
16 time eventually you would be getting essentially a vested
17 interest in your -- in stocks which will eventually be paid to
18 you as stock most likely and then many people would sell those
19 stocks and then your compensation on an annual basis would
20 match what people would say -- what the company would say is
21 your annual compensation for a given year.

22 So it's a great way for companies to manage cash
23 flows, to reduce tax and to work on employee retention, but it
24 has nothing to do with giving an economic interest in the
25 company over the period invested in those RSUs. It was a way

1 of deferring compensation which had an economic benefit to the
2 actual shareholders not to mention the debt holders of the
3 company.

4 THE COURT: Okay.

5 MR. GRAN: And I'll save any other comments for
6 whenever we get to the next stage.

7 THE COURT: Okay. Thank you very much. Is there
8 anyone I've left out who wishes to be heard? Good. I think
9 that this has been an extremely useful process of shared
10 education. I've learned some things and I suspect that the
11 debtor learned some things as well.

12 I think it would be useful for us to follow the plan
13 that I laid out at the beginning of this afternoon's hearing.
14 But by no means am I suggesting that that's the only way for us
15 to proceed. And if upon further reflection, the parties are
16 able to develop a more efficient or productive means to get to
17 the same end, I'm certainly open to suggestions. But I'm going
18 to at least reiterate, first, that there be an annotation or
19 restatement of the debtors' omnibus reply. I'm not suggesting
20 that there be a reply to today's hearing. In other words, I'm
21 not suggesting that you have an opportunity for rebuttal. I
22 presume that at some point you will have that opportunity. I
23 think that the claimants who wish to comment with respect to
24 the statements that are currently on the record by the debtor
25 should have that opportunity once they recognize each and every

1 part of the omnibus statement of the debtor that applies to
2 their claims.

3 I then think it would be useful for the debtor to
4 engage in a dialogue particularly with but not exclusively
5 limited to those claimants who are represented by counsel for
6 purposes of developing a set of procedures so that we can have
7 a record here. I am not in a position to decide the matters
8 before the Court without competent evidence. And at the
9 moment, while I have suggestions as to what the facts may be, I
10 do not have admissible evidence at this point. The evidence
11 can be admissible by virtue of stipulations, declarations,
12 depositions or perhaps a formal evidentiary hearing to be
13 scheduled on notice.

14 To the extent that the parties wish an opportunity to
15 further brief the issues in anticipation of that evidentiary
16 hearing or that evidentiary submission, I'm going to request
17 that the debtor take the lead in proposing a schedule for that.
18 There'll be no need to repeat everything that has already been
19 said. But I think there will be a need to deal with the
20 specifics of what I heard today which, frankly, differs from
21 some of what I've read in preparation for today.

22 With that, I'm going to adjourn today's hearing and go
23 into my chambers conference. And I wish you all a good
24 holiday.

25 (Whereupon these proceedings were concluded at 3:35 p.m.)

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I N D E X

RULINGS

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C E R T I F I C A T I O N

I, Hana Copperman, certify that the foregoing transcript is a true and accurate record of the proceedings.

Hana
Copperman

Digitally signed by Hana Copperman
DN: cn=Hana Copperman, o, ou,
email=digital1@veritext.com, c=US
Date: 2011.12.27 11:00:05 -05'00'

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Veritext

200 Old Country Road

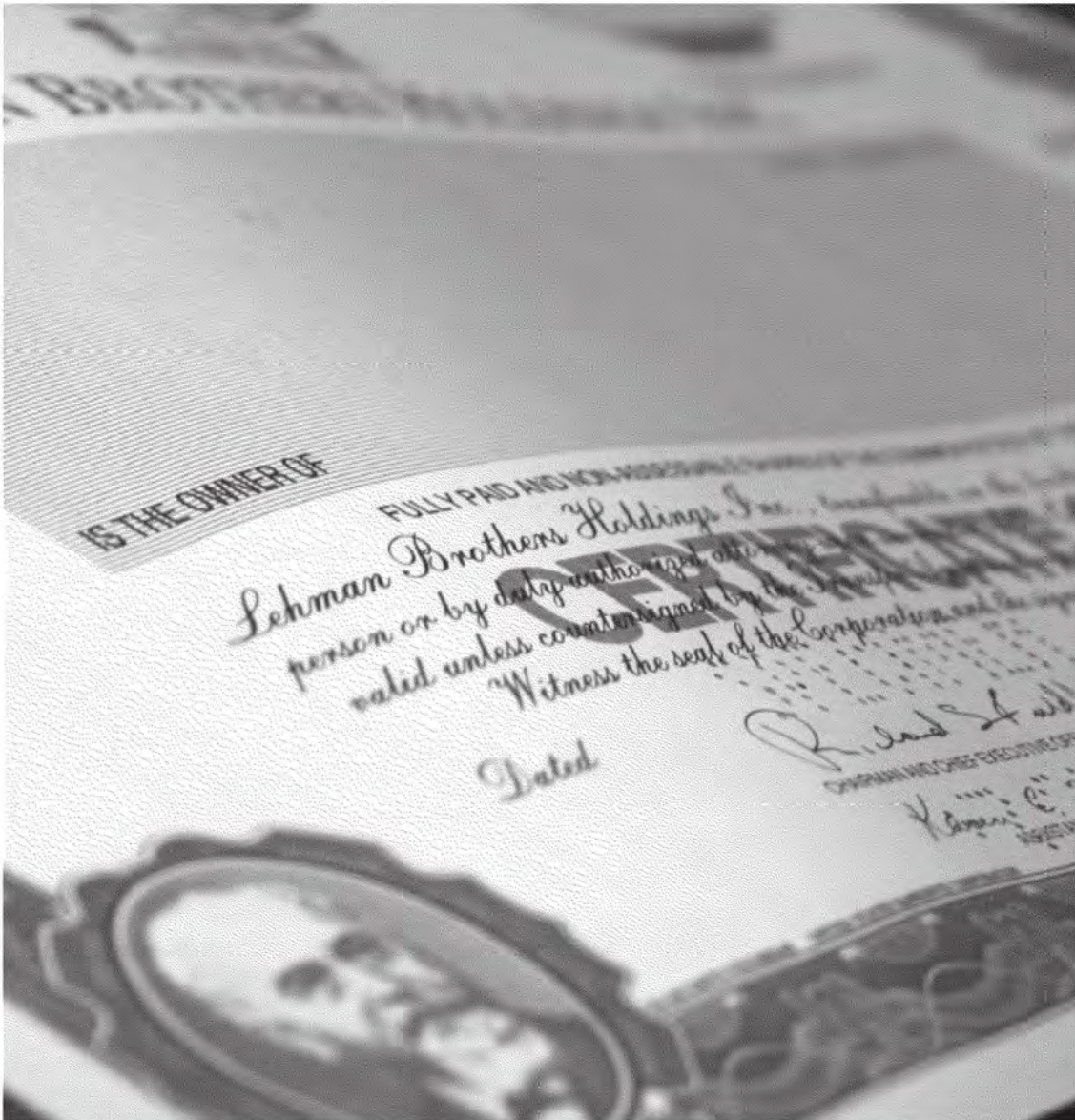
Suite 580

Mineola, NY 11501

Date: December 25, 2011

Exhibit C

LEHMAN BROTHERS



2005 EQUITY AWARD PROGRAM FOR BONUS-ELIGIBLE AND PRODUCTION-BASED EMPLOYEES

LEHMAN BROTHERS

Eligibility

Active employees (both bonus-eligible and production-based) hired on or before November 30, 2005, including employees on an approved leave of absence, are eligible to receive an equity award for 2005. Any bonus-eligible employee whose employment terminates (or who gives notice or is notified of termination) prior to the time when bonuses are paid in January 2006 is not entitled to a 2005 equity award.

If a production-based employee terminates employment prior to November 30, 2005, the 2005 equity award is based on the amount of production-based compensation accrued for the 2005 equity award through the date of termination, in accordance with the Firm's standard formula for the payout of equity-based compensation for employees at the applicable level. The disposition of the equity award is subject to the termination provisions on page 8.

Note that eligibility to receive an equity award is subject to a 3-share minimum.

How the Equity Award Program Works

The Equity Award Program provides members of Lehman Brothers with a direct ownership interest in the Firm, and requires us to hold that stake for at least five years. In doing so, the Program gives each of us an incentive to think and act like an owner every day, and allows us to share in the Firm's financial success over time. Your 2005 equity award was awarded to you as a portion of your 2005 compensation.

For MDs and SVPs, if you elected to receive stock options in 2005, seventy-five percent of the value of your 2005 equity award was in restricted stock units ("RSUs") and 25 percent was in stock options; for all other employees (as well as MDs and SVPs who did not elect to receive stock options), one hundred percent of the value of your 2005 equity award was in RSUs. Each RSU represents the conditional right to receive one share of Lehman Brothers common stock five years after the grant date, on November 30, 2010. You can consider the RSUs as shares of Lehman Brothers common stock that the Firm holds on your behalf for five years, which you will be entitled to receive at that time, provided you meet certain terms and conditions. The RSUs cannot be sold, traded, or pledged for that five-year period. Any stock options awarded to you as part of the 2005 Equity Award Program will expire on or before November 29, 2015. These options may not be sold, traded or pledged and may only be exercised by you (or your estate in the event of your death).

The Size of Your Award

The details of your 2005 equity award are available on the Personal Award Summary section of the Equity Award Program site on LehmanLive (keyword: EquityAward). The amount of each individual's award is determined according to a schedule that specifies the awards granted at each level of compensation and corporate title. Under this schedule, the amount of compensation paid in the form of conditional equity awards (RSUs and stock options, as applicable) increases as total compensation rises.

Bonus-Eligible Employees: Your award was based on your 2005 total compensation, which includes salary earned in fiscal year 2005 plus any additional compensation with respect to fiscal year 2005, even if some of these payments are deferred or paid in 2006. Such compensation includes 2005 bonus, commissions, and other compensation.

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Production-Based Employees: Similar to bonus-eligible employees, you received a year-end conditional equity award as a portion of your 2005 total compensation. Your equity award accrued on a monthly basis, as a portion of your total payout on gross production during December 2004 through November 2005 (paid from January through December 2005) after all adjustments. For 2005, the portion of your total payout in cash (such as cash commissions) and the portion accrued in conditional equity awards were based on the award schedule previously communicated to you. (A copy of 2005 Equity Award Schedule appears on page 5.) The 2005 payout may have included regular production payout, certain special payments, and other production payout. During any period you are paid a draw, equity (in the form of RSUs and/or stock options) may be awarded with respect to the amount of the draw. If the draw ends and the you have earned production payout in excess of the draw, a portion of the excess ("overage") is paid in cash and a portion is accrued toward a year-end equity award (in the year in which overage is accrued). Note that for purposes of this communication, all references to payout or compensation assume compensation payments that are equity eligible only.

The Firm-Provided Discount

The number of RSUs you received for 2005 was based on the closing price of Lehman Brothers common stock on November 30, 2005 (\$126.00 per share), less a discount: 30 % for MDs and 25% for all other employees.

For MDs, with a 30 percent discount, every \$100 of compensation in RSUs gives you \$143 in value; for other employees, with a 25 percent discount, every \$100 of compensation in RSUs gives you \$133 in value. The discount really means that the Firm "grosses up" your contribution at the outset.

If you elected stock options for 2005 (MDs and SVPs only), the number of options you received was based on the Black-Scholes value (\$46.96) of a 10-year Lehman Brothers option on November 30, 2005, less the applicable discount (30% for MDs and 25% for SVPs). These options have an exercise price of \$126.00 and will expire on or before November 29, 2015.

Components of the Equity Award

Employees receive a portion of their total compensation in the form of conditional equity awards. The equity component of total compensation is in a combination of 75% RSUs and 25% stock options (for MDs and SVPs who elected to receive stock options) or 100% in RSUs (for all other employees):

	RSUs	Options
Grant Date:	November 30, 2005	November 30, 2005
Market Price:	\$126.00	N/A
Exercise Price:	N/A	\$126.00
Black-Scholes Value:	N/A	\$46.96
Discount:	30% MDs 25% Others	30% MDs 25% SVPs
Cost to Employee:	\$88.20 (MDs) \$94.50 (Others)	\$32.87 (MDs) \$35.22 (SVPs)
Restriction Period:	5 years	N/A
Option Period:	N/A	10 years

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When Will My RSUs Vest?

The vesting provisions of your 2005 RSUs are consistent with last year's RSUs. For purposes of discussing the vesting schedule, you should consider your RSU award as having two components: the **principal portion** and the **discount portion**. The principal portion represents the number of RSUs awarded as part of your 2005 total compensation before the discount. The discount portion represents the balance of your RSU award, provided by the Firm. Your RSUs will vest in accordance with the schedule below:

	Principal	Discount
MDs	35% on November 30, 2008 35% on November 30, 2010	30% on November 30, 2010
Others	75% on November 30, 2007	25% on November 30, 2010

Notwithstanding the above, in the event your employment is terminated with Cause or you engage in Detrimental Activity prior to November 30, 2010, all of your RSUs will be forfeited. Please refer to page 9 for the definition of Detrimental Activity.

When Will My Stock Options Become Exercisable (MDs and SVPs, as applicable)?

You should consider your stock option award as having two components: the **principal portion** and the **discount portion**. The principal portion represents the number of stock options awarded as part of your 2005 compensation before the discount. The discount portion represents the balance of your stock option award, provided by the Firm.

Your stock options (if elected) will become exercisable in accordance with the schedule below:

	Principal	Discount
MDs	35% on November 30, 2008 35% on November 30, 2010	30% on November 30, 2010
SVPs	75% on November 30, 2007	25% on November 30, 2010

Notwithstanding the above, in the event your employment is terminated with Cause or you engage in Detrimental Activity prior to November 29, 2015, all of your stock options will be forfeited. Please refer to page 9 for the definition of Detrimental Activity.

Please refer to the *Termination Provisions* on page 8 for a detailed explanation of how your RSUs and stock options may be affected if you leave Lehman Brothers, including the circumstances under which you may forfeit your rights to your RSUs and stock options.

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2005 Equity Award Schedule

The participation schedule for 2005 is listed below. This schedule reflects the equity portion of 2005 total compensation ("TC"). An example of the calculations follows.

2005 EQUITY AWARD SCHEDULE

Total Compensation Range	AMOUNT OF TOTAL COMPENSATION ("TC") IN EQUITY-BASED AWARDS		
	Employees Through Vice President Level	Senior Vice Presidents	Managing Directors
\$0 - \$74,999	1% of 2005 TC	2% of 2005 TC	2% of 2005 TC
\$75,000 - \$99,999	2% of 2005 TC	2% of 2005 TC	2% of 2005 TC
\$100,000 - \$199,999	\$2,000 plus 6% of 2005 TC over \$100,000	\$2,000 plus 6% of 2005 TC over \$100,000	\$2,000 plus 6% of 2005 TC over \$100,000
\$200,000 - \$299,999	\$8,000 plus 10% of 2005 TC over \$200,000	\$8,000 plus 10% of 2005 TC over \$200,000	\$8,000 plus 10% of 2005 TC over \$200,000
\$300,000 - \$499,999	\$18,000 plus 15% of 2005 TC over \$300,000	\$30,000 plus 16.25% of 2005 TC over \$300,000	\$30,000 plus 16.25% of 2005 TC over \$300,000
\$500,000 - \$749,999	\$48,000 plus 20% of 2005 TC over \$500,000	\$62,500 plus 20% of 2005 TC over \$500,000	\$62,500 plus 20% of 2005 TC over \$500,000
\$750,000 - \$999,999	\$98,000 plus 25% of 2005 TC over \$750,000	\$112,500 plus 35% of 2005 TC over \$750,000	\$112,500 plus 35% of 2005 TC over \$750,000
\$1,000,000 - \$1,499,999	\$160,500 plus 30% of 2005 TC over \$1.0 million	\$200,000 plus 35% of 2005 TC over \$1.0 million	\$200,000 plus 44% of 2005 TC over \$1.0 million
\$1,500,000 - \$1,999,999	\$310,500 plus 35% of 2005 TC over \$1.5 million	\$375,000 plus 45% of 2005 TC over \$1.5 million	\$420,000 plus 56% of 2005 TC over \$1.5 million
\$2,000,000 - \$2,499,999	\$485,500 plus 40% of 2005 TC over \$2.0 million	\$600,000 plus 55% of 2005 TC over \$2.0 million	\$700,000 plus 60% of 2005 TC over \$2.0 million
\$2,500,000 and up	\$685,500 plus 45% of 2005 TC over \$2.5 million up to a max of 30% of 2005 TC	35% of 2005 TC	40% of 2005 TC

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Award Calculation Example

Using the Equity Award Schedule above, your 2005 equity award was determined at year-end based on your 2005 total compensation. Sample illustrations are shown below.

	Employees thru VP Level	SVPs ¹	MDs ¹
2005 Total Compensation	\$100,000	\$500,000	\$1,000,000
Amount of Compensation in Equity	\$2,000	\$62,500	\$200,000
Amount of Compensation in RSUs:	\$2,000	\$46,875	\$150,000
FMV on grant date:	\$126.00	\$126.00	\$126.00
Discount:	25%	25%	30%
Discounted grant price:	\$94.50	\$94.50	\$88.20
Total # of RSUs:	21	496	1,701
Principal Portion:	16	372	1,191
Discount Portion:	5	124	510
Amount of Compensation in Options:		\$15,625	\$50,000
Exercise price on grant date:		\$126.00	\$126.00
Black-Scholes (B-S) value:		\$46.96	\$46.96
Discount:		25%	30%
Discounted B-S value:	N/A	\$35.22	\$32.87
Total # of Options:		444	1,521
Principal Portion:		333	1,065
Discount Portion:		111	456

Note: The number of RSUs has been rounded to the nearest whole number for illustrative purposes only.

¹ Assumes SVP/MD elected to receive 25% of the 2005 equity award in stock options.

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2005 Monthly Equity Accrual for Production-Based Employees

Below is the monthly calculation for a production-based employee whose total compensation earned for production months December 2004 to November 2005 (paid January to December 2005) is \$100,000.

Step	Instructions	Sample Calculation	Sample Result
Step 1	Take YTD Total Compensation for first month, annualize (multiply by 12) and divide by production month number.	$\$7,000 \times 12 \div 1$	\$84,000
Step 2	Calculate projected award from 2005 Award schedule.	\$1,680	\$1,680
Step 3	Multiply result by allocation %. Subtract previous month's YTD equity accrual from result. This is the monthly equity accrual.	$(\$1,680 \times 8.33\%) - \0	\$140
Step 4	Take YTD Total Compensation for second month, multiply by 12 and divide by production month number.	$\$15,000 \times 12 \div 2$	\$90,000
Step 5	Calculate projected award from 2005 Award schedule	\$1,800	\$1,800
Step 6	Multiply result by allocation %. This is the YTD equity accrual. Subtract previous month's YTD equity accrual from result. This is the monthly equity accrual.	$(\$1,800 \times 16.67\%) - \140	\$160
Step 7	Repeat for next month.		

#	Pay Month	Monthly Total Comp.	YTD Total Comp.	Annualized Total Comp.	Projected Equity Award	Allocation %	YTD Equity Accrual	Monthly Equity Accrual
1	January	\$7,000	\$7,000	\$84,000	\$1,680	8.33%	\$140	\$140
2	February	8,000	15,000	90,000	1,800	16.67%	300	160
3	March	10,000	25,000	100,000	2,000	25.00%	500	200
4	April	7,500	32,500	97,500	1,950	33.33%	650	150
5	May	9,500	42,000	100,800	2,048	41.67%	853	203
6	June	7,000	49,000	98,000	1,960	50.00%	980	127
7	July	7,500	56,500	96,857	1,937	58.33%	1,130	150
8	August	10,500	67,000	100,500	2,030	66.67%	1,353	223
9	September	8,000	75,000	100,000	2,000	75.00%	1,500	147
10	October	8,500	83,500	100,200	2,012	83.33%	1,677	177
11	November	6,500	90,000	98,182	1,964	91.67%	1,800	123
12	December	10,000	100,000	100,000	2,000	100.00%	2,000	200
Total								\$2,000

In the example above, \$2,000 is the amount of total compensation delivered to the production-based employee in equity. For calculation of the number of RSUs and/or stock options (including principal and discount portion), see example on page 6. *Note that if a production-based employee terminates employment prior to November 30, 2005, the 2005 equity award is based on the amount of production-based compensation accrued for the 2005 equity award through the date of termination, in accordance with the Firm's standard formula for the payout of equity-based compensation for employees at the applicable level. The disposition of the equity award is subject to the termination provisions on page 8.*

LEHMAN BROTHERS

Termination Provisions

	All Employees
Voluntary Termination to Non-Competitor	<p>RSUs: Participants remain entitled to the principal portion of their RSU award plus a pro-rata portion of their discount (20% for each full year of employment after November 30, 2005). Shares will be issued on the Share Payment Date (defined as the earlier of the end of the fiscal quarter one year after termination or November 30, 2010), provided the participant does not engage in Competitive Activity or Detrimental Activity.</p> <p>Stock Options: Stock options become exercisable six months after termination and remain exercisable until the later of 5 years from grant, or 6 months after termination (but no later than the expiration date), provided the participant does not engage in Competitive Activity or Detrimental Activity.</p>
Involuntary Termination	<p>RSUs: Participants remain entitled to the principal portion of their award plus a pro-rata portion of the discount (20% for each full year of employment after November 30, 2005). Shares will be issued on the Share Payment Date, provided the participant does not engage in Detrimental Activity.</p> <p>Stock Options: Stock options become exercisable immediately upon termination and remain exercisable until the later of 5 years from grant, or 6 months after termination (but no later than the expiration date), provided the participant does not engage in Detrimental Activity.</p> <p>However, in the event of an involuntary termination with Cause, both the principal and discount portions of both RSUs and stock options will be forfeited.</p>
Voluntary Termination to Competitor	<p>RSUs: Participants forfeit all unvested RSUs. Any remaining shares will be issued on the Share Payment Date, provided the participant does not engage in Detrimental Activity.</p> <p>Stock Options: Any stock options that have not been exercised prior to termination will be forfeited.</p>
Full Career Termination	<p>RSUs: Participants who leave the Firm or are involuntarily terminated without Cause but who qualify under "Full Career" provisions will receive 100% of the RSU discount (in addition to the principal portion) on the Share Payment Date, subject to applicable Competitive Activity and Detrimental Activity provisions. A termination is "Full Career" if:</p> <ul style="list-style-type: none"> • The participant has at least 20 years of service, <u>OR</u> • The participant has at least 10 years of service, is at least 45 years old and the sum of the participant's age plus service is 65 or more <p>Stock Options: All stock options become exercisable under the applicable provisions described above and remain exercisable until the expiration date (November 29, 2015), subject to applicable Competitive Activity and Detrimental Activity provisions.</p>
Death, Disability, Retirement¹	<p>RSUs: Entire principal and discount vest immediately, and shares of Lehman Brothers common stock will be issued immediately.</p> <p>Options: Entire principal and discount immediately become exercisable and remain exercisable until the expiration date (November 29, 2015).</p>

¹ Retirement means a termination of employment when the person's age plus years of service equals at least 65, provided that (i) the person is at least 65 years old and has at least 5 years of service or (ii) the person is at least 55 years old and has at least 10 years of service. Entitlement is subject to applicable Competitive Activity and Detrimental Activity provisions.

LEHMAN BROTHERS

Your Conduct With Respect to Lehman Brothers After You Leave

You may forfeit your rights to any 2005 RSUs (and related dividend reinvestment) and unexercised stock options if you engage in Competitive Activity or Detrimental Activity.

Competitive Activity

Competitive Activity means involvement (whether as an employee, proprietor, consultant or otherwise) with any person or entity (including any company and its affiliates) engaged in any business activity which is materially competitive with any business carried on by Lehman Brothers Holdings Inc. or any of its subsidiaries or affiliates on the date of termination of a person's employment with the Firm, as determined in the sole discretion of the Chief Executive Officer or the Chief Operating Officer of the Firm (or their respective designees). ***Please note that the determination of Competitive Activity is not based on the function that an individual performs in a company but rather the nature of the company's businesses.***

Most financial services companies, including but not limited to, investment banks, commercial banks, small boutique-type firms, asset management companies, mortgage-related companies, private equity firms, and hedge funds, are considered competitors of the Firm for purposes of the Equity Award Program.

While the Firm values its client relationships with financial institutions, these relationships will not preclude companies being deemed competitors when any of their business activities may be considered competitive with the Firm. Please consult your Human Resources representative or the Compensation Department if you have questions about a particular company.

Detrimental Activity

Detrimental Activity means at any time (i) using information received during a person's employment with Holdings or any of its subsidiaries relating to the business affairs of Holdings or any of its subsidiaries, affiliates or clients, in breach of such person's undertaking to keep such information confidential; (ii) directly or indirectly persuading or attempting to persuade, by any means, any employee of Holdings or any of its subsidiaries or affiliates to terminate employment with any the foregoing or to breach any of the terms of his or her employment with the foregoing; (iii) directly or indirectly making any statement that is, or could be, disparaging of Holdings, its subsidiaries or affiliates, or any of their employees (except as necessary to respond truthfully to any inquiry from applicable regulatory authorities or to provide information pursuant to legal process); or (iv) directly or indirectly engaging in any activity that is, or could be, substantially injurious to the financial condition, reputation or goodwill of Holdings or its subsidiaries or affiliates, in each case as determined in the sole discretion of an Appropriate Officer.

LEHMAN BROTHERS

Tax Considerations

Tax Treatment of RSUs and Stock Options

Under current tax regulations, you will not be taxed on the value of your RSUs until they convert to common stock. As a result, your RSUs appreciate on a pre-tax basis for the five-year restriction period. You will not be taxed on the value of your stock option award on the date of grant. When you exercise your options, the gain will be considered ordinary income subject to applicable tax withholding. Provided below is a summary of the taxes related to RSUs and stock options that are ultimately due under current law.

Note: Pursuant to current tax law, if you work in more than one tax jurisdiction during the 5-year restriction period (from the date of grant through the conversion date for RSUs) or during the 10-year option period (from the date of grant through the date of exercise), you and/or the Firm may have a tax reporting requirement and/or tax withholding obligation and/or actual tax liability with respect to each such jurisdiction. The income attributed to a specific tax jurisdiction will be calculated for tax withholding and reporting purposes based on the relevant employment period in each location during the applicable period.

RSUs	Options
<ul style="list-style-type: none"> No taxation on the award date. Upon conversion to common stock, the fair market value of the shares will be taxed as employment income based on the closing price of Lehman Brothers common stock on the conversion date. This income will be subject to applicable tax withholding. Special provisions dealing with capital gains will not apply upon conversion to common stock. If you retain your shares after your RSUs convert to common stock, the basis for capital gains is the closing price on the conversion date. 	<ul style="list-style-type: none"> No taxation on the award date. When options are exercised, the difference between the Fair Market Value on the exercise date and the option exercise price will be taxed as employment income. Fair Market Value is defined as a) the average of the sale price(s) (for a "same-day-sale" transaction) or b) the closing price of Lehman Brothers common stock on the exercise date (for a cash exercise). Please refer to the Questions and Answers for Exercising Stock Options, that has been provided to you, for a more detailed explanation of the procedures for exercising stock options. This income will be subject to applicable tax withholding. Special provisions dealing with capital gains will not apply when options are exercised. If you retain your shares upon exercise, the basis for capital gains is the Fair Market Value on the date of exercise.

Consult your personal tax advisor concerning the application of all federal/state/local or foreign tax laws on your RSUs and stock options.

LEHMAN BROTHERS

Change in Control ("CIC") Provisions

Reason	RSUs	Options
Hostile	<ul style="list-style-type: none"> All RSUs vest immediately. Shares of Lehman Brothers common stock will be issued immediately. 	<ul style="list-style-type: none"> All options become immediately exercisable.
Friendly	<ul style="list-style-type: none"> Upon the CIC, you will receive the undiscounted award price for your RSUs in either cash or equity. The additional value of the RSUs in excess of the undiscounted RSU award price ("Premium") will be paid on the Payment Date, defined as the earlier of: a) two years following the CIC or b) November 30, 2010 (five years after the award date). The premium RSUs (or cash balance) will remain subject to the vesting and issuance restrictions (including the provisions related to Competitive Activity and Detrimental Activity) through the Payment Date. 	<ul style="list-style-type: none"> Half of the non-exercisable options will become immediately exercisable. The remaining half will continue to be subject to all exercise provisions until the earlier of: a) two years following the CIC or b) the scheduled exercise dates: <ul style="list-style-type: none"> f MDs: 35 percent on 11/30/08 65 percent on 11/30/10 f SVPs: 75 percent on 11/30/07 25 percent on 11/30/10

Example: Payment of RSUs Upon a Friendly CIC

	Employees thru VP Level	SVP ¹	MD ¹
FMV of LEH at Grant	\$126.00	\$126.00	\$126.00
Discounted Grant Price	\$94.50	\$94.50	\$88.20
Amount of Compensation in RSUs	\$2,000	\$62,500	\$200,000
Principal RSUs	16	496	1,587
Discount RSUs	5	165	680
Total Grant Value with Discount	\$2,667	\$83,333	\$285,714
<u>Upon Change in Control</u>			
CIC Offer Price	\$200.00	\$200.00	\$200.00
Total Value of RSUs at CIC Price	\$4,233	\$132,275	\$453,515
Value of RSUs to be Issued	\$2,667	\$83,333	\$285,714
# Shares of LEH Issued Upon CIC	13	417	1,429
<u>Premium over Grant Value</u> <i>(paid on earlier of 2 years from CIC or November 30, 2010)</i>			
Value of Premium	\$1,566	\$48,942	\$167,800
Additional Premium RSUs	8	245	839
"Principal Premium RSUs"	6	184	587
"Discount Premium RSUs"	2	73	252

¹ Assumes SVP/MD elected to receive 100% of the 2005 equity award in RSUs.

LEHMAN BROTHERS

Dividend Equivalents

Dividend equivalents accrue quarterly on your RSUs and are reinvested as additional RSUs, without a discount. Dividend reinvestment RSUs are subject to the same vesting and forfeiture provisions as the underlying RSUs to which they relate. The Firm retains the discretion to change this dividend policy at any time to pay in cash rather than RSUs. Dividends will not be paid on stock option awards.

Voting Rights

Lehman Brothers established a Trust and funded it with shares for your benefit to provide you with voting rights related to your RSU awards. You will be able to direct the voting related to shares held in the Trust in proportion to the number of RSUs you hold. You will continue to have these voting rights as long as you remain employed with the Firm.

Other Information

In the event of any conflict between the plan documents (including, but not limited to, the Restricted Stock Unit Award Agreement, the Stock Option Award Agreement, the Employee Incentive Plan, and the Employee Incentive Plan Prospectus) and the information in this summary, the plan documents will govern.

Nothing in this summary or the plan documents shall be construed to create or imply any contract of employment between you and Lehman Brothers.

All references to taxation in this summary refer to U.S. Federal taxes and current tax law. You should consult your local tax authorities or personal tax consultant for details on the impact of tax laws in effect at the time your RSUs and stock options become taxable.

If you have any questions about the Program in general, your personal award summary or your award agreement, visit the Equity Award Program site on LehmanLive (keyword: [EquityAward](#)) or contact the Compensation Department at 212-526-8346 (5-8346) or by e-mail at compensation@lehman.com.

Exhibit D

[QuickLinks](#) -- Click here to rapidly navigate through this document

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

Form 10-K

☒ Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the fiscal year ended November 30, 2005
OR

☐ Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the transition period from _____ to _____
Commission File Number 1-9466

Lehman Brothers Holdings Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

13-3216325
(I.R.S. Employer Identification No.)

745 Seventh Avenue
New York, New York
(Address of principal executive offices)

10019
(Zip Code)

Registrant's telephone number, including area code: (212) 526-7000

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, \$10 par value	New York Stock Exchange Pacific Exchange
Depository Shares representing 5.94% Cumulative Preferred Stock, Series C	New York Stock Exchange
Depository Shares representing 5.67% Cumulative Preferred Stock, Series D	New York Stock Exchange
Depository Shares representing 6.50% Cumulative Preferred Stock, Series F	New York Stock Exchange
Depository Shares representing Floating Rate Cumulative Preferred Stock, Series G	New York Stock Exchange
6.375% Trust Preferred Securities, Series K, of Subsidiary Trust (and Registrant's guarantee thereof)	New York Stock Exchange
6.375% Trust Preferred Securities, Series L, of Subsidiary Trust (and Registrant's guarantee thereof)	New York Stock Exchange
6.00% Trust Preferred Securities, Series M, of Subsidiary Trust (and Registrant's guarantee thereof)	New York Stock Exchange
6.24% Trust Preferred Securities, Series N, of Subsidiary Trust (and Registrant's guarantee thereof)	New York Stock Exchange
Guarantee by Registrant of 7.58% Notes due 2006 of Lehman Brothers Inc.	New York Stock Exchange
6 3/4% Exchangeable Notes Due October 15, 2007 (subject to exchange into shares of common stock of General Mills, Inc.)	New York Stock Exchange
Absolute Buffer Notes Due July 29, 2008, Linked to the Dow Jones EURO STOXX50 SM Index (SXSE)	American Stock Exchange
Absolute Buffer Notes Due July 7, 2008, Linked to the Dow Jones EURO STOXX 50 SM Index (SXSE)	American Stock Exchange
Dow Jones Industrial Average 112.5% Minimum Redemption PrincipalPlus Stock Upside Note Securities Due August 5, 2007	American Stock Exchange
Dow Jones Industrial Average Stock Upside Note Securities Due April 29, 2010	American Stock Exchange
Index-Plus Notes Due December 23, 2009, Performance Linked to the Russell 2000 INDEX (RTY)	American Stock Exchange
Index-Plus Notes Due March 3, 2010, Linked to the S&P 500 Index (SPX)	American Stock Exchange
Index-Plus Notes Due November 15, 2009, Linked to the Dow Jones STOXX 50 SM Index (SXSP)	American Stock Exchange
Index-Plus Notes Due September 28, 2009, Performance Linked to S&P 500 Index (SPX)	American Stock Exchange
Nasdaq-100 Index Rebound Risk AdjustING Equity Range Securities SM Notes Due May 20, 2007	American Stock Exchange
Nasdaq-100 Index Rebound Risk AdjustING Equity Range Securities SM Notes Due June 7, 2008	American Stock Exchange
Nikkei 225SM Index Call Warrants Expiring May 8, 2007	American Stock Exchange
Nikkei 225SM Index Stock Upside Note Securities Due June 10, 2010	American Stock Exchange
Prudential Research Universe Diversified Equity Notes Due July 2, 2006, Linked to a Basket of Healthcare Stocks	American Stock Exchange
Return Accelerated Portfolio Debt Securities Due September 3, 2006, Linked to the S&P 500 Index (SPX)	American Stock Exchange
S&P 500 Index Callable Stock Upside Note Securities Due November 6, 2009	American Stock Exchange
S&P 500 Index Stock Upside Note Securities Due August 5, 2008	American Stock Exchange
S&P 500 Index Stock Upside Note Securities Due December 26, 2006	American Stock Exchange
S&P 500 Index Stock Upside Note Securities Due February 5, 2007	American Stock Exchange
S&P 500 Index Stock Upside Note Securities Due September 27, 2007	American Stock Exchange
The Dow Jones Global TitansSM 50 Index Stock Upside Note Securities Due February 9, 2010	American Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the Registrant: (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (Section 229.405 of this chapter) is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one): Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The aggregate market value of the voting and nonvoting common equity held by non-affiliates of the Registrant at May 31, 2005 (the last business day of the Registrant's most recently completed second fiscal quarter) was approximately \$24,370,000,000. As of that date, 264,317,470 shares of the Registrant's common stock, \$0.10 par value per share, were held by non-affiliates. For purposes of this information, the outstanding shares of common stock that were and that may be deemed to have been beneficially owned by directors and executive

LEHMAN BROTHERS HOLDINGS INC.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders of Lehman Brothers Holdings Inc.

We have audited management's assessment, included in the accompanying *Management's Assessment of Internal Control over Financial Reporting*, that Lehman Brothers Holdings Inc. (the "Company") maintained effective internal control over financial reporting as of November 30, 2005, based on criteria established in *Internal Control-Integrated Framework*, issued by the Committee of Sponsoring Organizations of the Treadway Commission (the "COSO criteria"). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, management's assessment that Lehman Brothers Holdings Inc. maintained effective internal control over financial reporting as of November 30, 2005, is fairly stated, in all material respects, based on the COSO criteria. Also, in our opinion, Lehman Brothers Holdings Inc. maintained, in all material respects, effective internal control over financial reporting as of November 30, 2005, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated statement of financial condition of Lehman Brothers Holdings Inc. as of November 30, 2005 and 2004 and the related consolidated statements of income, changes in stockholders' equity and cash flows for each of the three years in the period ended November 30, 2005 of Lehman Brothers Holdings Inc. and our report dated February 13, 2006 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP
New York, New York
February 13, 2006

LEHMAN BROTHERS HOLDINGS INC.

Management's Assessment of Internal Control over Financial Reporting

The management of Lehman Brothers Holdings Inc. (the "Company") is responsible for establishing and maintaining adequate internal control over financial reporting. The Company's internal control system is designed to provide reasonable assurance to the Company's management and Board of Directors regarding the preparation and fair presentation of published financial statements. All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation.

The Company's management assessed the effectiveness of the Company's internal control over financial reporting as of November 30, 2005. In making this assessment, it used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control-Integrated Framework*. Based on our assessment we believe that, as of November 30, 2005, the Company's internal control over financial reporting is effective based on those criteria.

The Company's independent registered public accounting firm that audited the accompanying Consolidated Financial Statements has issued an attestation report on our assessment of the Company's internal control over financial reporting. Their report appears on the preceding page.

LEHMAN BROTHERS HOLDINGS INC.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders of Lehman Brothers Holdings Inc.

We have audited the accompanying consolidated statement of financial condition of Lehman Brothers Holdings Inc. (the "Company") as of November 30, 2005 and 2004, and the related consolidated statements of income, changes in stockholders' equity, and cash flows for each of the three years in the period ended November 30, 2005. Our audits also included the financial statement schedule listed in the Index at Item 15. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Lehman Brothers Holdings Inc. at November 30, 2005 and 2004, and the consolidated results of its operations and its cash flows for each of the three years in the period ended November 30, 2005, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of Lehman Brothers Holdings Inc.'s internal control over financial reporting as of November 30, 2005, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 13, 2006 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP
New York, New York
February 13, 2006

LEHMAN BROTHERS HOLDINGS INC.
CONSOLIDATED STATEMENT OF INCOME

In millions, except per share data
Year ended November 30

	2005	2004	2003
Revenues			
Principal transactions	\$ 7,811	\$ 5,699	\$ 4,272
Investment banking	2,894	2,188	1,722
Commissions	1,728	1,537	1,210
Interest and dividends	19,043	11,032	9,942
Asset management and other	944	794	141
Total revenues	32,420	21,250	17,287
Interest expense	17,790	9,674	8,640
Net revenues	14,630	11,576	8,647
Non-Interest Expenses			
Compensation and benefits	7,213	5,730	4,318
Technology and communications	834	764	598
Brokerage and clearance fees	503	453	367
Occupancy	490	421	319
Professional fees	282	252	158
Business development	234	211	149
Other	245	208	125
Real estate reconfiguration charge	-	19	77
Total non-personnel expenses	2,588	2,328	1,793
Total non-interest expenses	9,801	8,058	6,111
Income before taxes and dividends on trust preferred securities	4,829	3,518	2,536
Provision for income taxes	1,569	1,125	765
Dividends on trust preferred securities	-	24	72
Net income	\$ 3,260	\$ 2,369	\$ 1,699
Net income applicable to common stock	\$ 3,191	\$ 2,297	\$ 1,649
Earnings per share			
Basic	\$ 11.47	\$ 8.36	\$ 6.71
Diluted	\$ 10.87	\$ 7.90	\$ 6.35

See Notes to Consolidated Financial Statements.

LEHMAN BROTHERS HOLDINGS INC.
CONSOLIDATED STATEMENT OF FINANCIAL CONDITION

In millions
November 30

2005

2004

Assets			
Cash and cash equivalents	\$	4,900	\$ 5,440
Cash and securities segregated and on deposit for regulatory and other purposes		5,744	4,085
Financial instruments and other inventory positions owned: (includes \$36,369 in 2005 and \$27,418 in 2004 pledged as collateral)		177,438	144,468
Securities received as collateral		4,975	4,749
Collateralized agreements:			
Securities purchased under agreements to resell		106,209	95,535
Securities borrowed		78,455	74,294
Receivables:			
Brokers, dealers and clearing organizations		7,454	3,400
Customers		12,887	13,241
Others		1,302	2,122
Property, equipment and leasehold improvements (net of accumulated depreciation and amortization of \$1,448 in 2005 and \$1,187 in 2004)		2,885	2,988
Other assets		4,558	3,562
Identifiable intangible assets and goodwill (net of accumulated amortization of \$257 in 2005 and \$212 in 2004)		3,256	3,284
Total assets	\$	410,063	\$ 357,168

See Notes to Consolidated Financial Statements.

LEHMAN BROTHERS HOLDINGS INC.
CONSOLIDATED STATEMENT OF FINANCIAL CONDITION (Continued)

In millions, except per share data
November 30

	2005	2004
Liabilities and Stockholders' Equity		
Short-term borrowings	\$ 2,941	\$ 2,857
Financial instruments and other inventory positions sold but not yet purchased	110,577	96,281
Obligation to return securities received as collateral	4,975	4,749
Collateralized financings:		
Securities sold under agreements to repurchase	116,155	105,956
Securities loaned	13,154	14,158
Other secured borrowings	23,116	11,621
Payables:		
Brokers, dealers and clearing organizations	1,870	1,705
Customers	47,210	37,824
Accrued liabilities and other payables	10,962	10,611
Long-term borrowings	62,309	56,486
Total liabilities	393,269	342,248
Commitments and contingencies		
Stockholders' Equity		
Preferred stock	1,095	1,345
Common stock, \$0.10 par value:		
Shares authorized: 600,000,000 in 2005 and 2004;		
Shares issued: 302,668,973 in 2005 and 297,796,197 in 2004;		
Shares outstanding: 271,437,103 in 2005 and 274,159,411 in 2004	30	30
Additional paid-in capital	6,314	5,865
Accumulated other comprehensive income (net of tax)	(16)	(19)
Retained earnings	12,198	9,240
Other stockholders' equity, net	765	741
Common stock in treasury, at cost: 31,231,870 shares in 2005 and 23,636,786 shares in 2004	(3,592)	(2,282)
Total common stockholders' equity	15,699	13,575
Total stockholders' equity	16,794	14,920
Total liabilities and stockholders' equity	\$ 410,063	\$ 357,168

See Notes to Consolidated Financial Statements.

LEHMAN BROTHERS HOLDINGS INC.
CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY

In millions

Year ended November 30

	2005	2004	2003
Preferred Stock			
5.94% Cumulative, Series C:			
Beginning and ending balance	\$ 250	\$ 250	\$ 250
5.67% Cumulative, Series D:			
Beginning and ending balance	200	200	200
7.115% Fixed/Adjustable Rate Cumulative, Series E:			
Beginning balance	250	250	250
Redemptions	(250)	-	-
Ending balance		250	250
6.50% Cumulative, Series F:			
Beginning balance	345	345	
Issuances	-	-	345
Ending balance	345	345	345
Floating Rate (3% Minimum) Cumulative, Series G:			
Beginning balance	300		
Issuances	-	300	-
Ending balance	300	300	
Total preferred stock, ending balance	1,095	1,345	1,045
Common Stock, Par Value \$0.10 Per Share			
Beginning balance	30	29	25
Issuances in connection with Neuberger acquisition			3
Other Issuances	-	1	1
Ending balance	30	30	29
Additional Paid-In Capital			
Beginning balance	5,865	6,164	3,628
RSUs exchanged for Common Stock	184	135	(36)
Employee stock-based awards	(760)	(585)	(352)
Tax benefit from the issuance of stock-based awards	1,005	468	543
Share issuances in connection with Neuberger acquisition	-	-	2,371
Neuberger final purchase price adjustment	-	(307)	-
Other, net	20	(10)	10
Ending balance	6,314	5,865	6,164
Accumulated Other Comprehensive Income			
Beginning balance	(19)	(16)	(13)
Translation adjustment, net ⁽¹⁾	3	(3)	(3)
Ending balance	\$ (16)	\$ (19)	\$ (16)

(1) Net of income taxes of \$1 in 2005, \$(2) in 2004 and \$(1) in 2003.

See Notes to Consolidated Financial Statements.

LEHMAN BROTHERS HOLDINGS INC.
CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY-(Continued)

In millions Year ended November 30	2005	2004	2003
Retained Earnings			
Beginning balance	\$ 9,240	\$ 7,129	\$ 5,608
Net income	3,260	2,369	1,699
Dividends declared:			
5.94% Cumulative, Series C Preferred Stock	(15)	(15)	(15)
5.67% Cumulative, Series D Preferred Stock	(11)	(11)	(11)
7.115% Fixed/Adjustable Rate Cumulative, Series E Preferred Stock	(9)	(18)	(18)
6.50% Cumulative, Series F Preferred Stock	(22)	(23)	(6)
Floating Rate (3% Minimum) Cumulative, Series G Preferred Stock	(12)	(5)	
Redeemable Voting Preferred Stock			
Common Stock	(233)	(186)	(128)
Ending balance	12,198	9,240	7,129
Common Stock Issuable			
Beginning balance	3,874	3,353	2,822
RSUs exchanged for Common Stock	(832)	(585)	(425)
Deferred stock awards granted	1,574	1,182	957
Other, net	(68)	(76)	(1)
Ending balance	4,548	3,874	3,353
Common Stock Held in RSU Trust			
Beginning balance	(1,353)	(852)	(754)
Employee stock-based awards	(676)	(876)	(518)
RSUs exchanged for Common Stock	549	401	444
Other, net	(30)	(26)	(24)
Ending balance	(1,510)	(1,353)	(852)
Deferred Stock Compensation			
Beginning balance	(1,780)	(1,470)	(1,119)
Deferred stock awards granted	(1,574)	(1,182)	(999)
Amortization of deferred compensation, net	988	773	625
Other, net	93	99	23
Ending balance	(2,273)	(1,780)	(1,470)
Common Stock In Treasury, at Cost			
Beginning balance	(2,282)	(2,208)	(1,955)
Repurchases of Common Stock	(2,994)	(1,693)	(967)
Shares reacquired from employee transactions	(1,163)	(574)	(541)
RSUs exchanged for Common Stock	99	49	18
Employee stock-based awards	2,748	2,144	1,237
Ending balance	(3,592)	(2,282)	(2,208)
Total stockholders' equity	\$ 16,794	\$ 14,920	\$ 13,174

See Notes to Consolidated Financial Statements.

LEHMAN BROTHERS HOLDINGS INC.
CONSOLIDATED STATEMENT OF CASH FLOWS

In millions

Year ended November 30

	2005	2004	2003
Cash Flows From Operating Activities			
Net income	\$ 3,260	\$ 2,369	\$ 1,699
Adjustments to reconcile net income to net cash provided by (used in) operating activities:			
Depreciation and amortization	426	428	315
Deferred tax benefit	(502)	(74)	(166)
Tax benefit from the issuance of stock-based awards	1,005	468	543
Amortization of deferred stock compensation	1,055	800	625
Real estate reconfiguration charge	—	19	77
Other adjustments	173	85	(26)
Net change in:			
Cash and securities segregated and on deposit for regulatory and other purposes	(1,659)	(985)	(297)
Financial instruments and other inventory positions owned	(36,652)	(8,936)	(14,736)
Resale agreements, net of repurchase agreements	(475)	(9,467)	19,504
Securities borrowed, net of securities loaned	(5,165)	(22,728)	(25,048)
Other secured borrowings	11,495	(2,923)	2,700
Receivables from brokers, dealers and clearing organizations	(4,054)	1,475	(1,100)
Receivables from customers	354	(4,432)	(530)
Financial instruments and other inventory positions sold but not yet purchased	14,156	23,471	5,326
Payables to brokers, dealers and clearing organizations	165	(1,362)	1,280
Payables to customers	9,386	10,158	10,189
Accrued liabilities and other payables	(801)	520	1,195
Other operating assets and liabilities, net	345	(370)	346
Net cash provided by (used in) operating activities	(7,488)	(11,484)	1,896
Cash Flows From Financing Activities			
Derivative contracts with a financing element	140	334	110
Issuance (payments) of short-term borrowings, net	84	526	(38)
Issuance of long-term borrowings	23,705	20,485	13,383
Principal payments of long-term borrowings	(14,233)	(10,820)	(10,137)
Issuance of preferred securities subject to mandatory redemption	—	—	600
Issuance of common stock	230	108	57
Issuance (retirement) of preferred stock	(250)	300	345
Issuance of treasury stock	1,015	551	260
Purchase of treasury stock	(2,994)	(1,693)	(967)
Dividends paid	(302)	(258)	(178)
Net cash provided by financing activities	7,395	9,533	3,435
Cash Flows From Investing Activities			
Purchase of property, equipment and leasehold improvements, net	(409)	(401)	(451)
Business acquisitions, net of cash acquired	(38)	(130)	(657)
Net cash used in investing activities	(447)	(531)	(1,108)
Net change in cash and cash equivalents	(540)	(2,482)	4,223
Cash and cash equivalents, beginning of period	5,440	7,922	3,699
Cash and cash equivalents, end of period	\$ 4,900	\$ 5,440	\$ 7,922
Supplemental Disclosure of Cash Flow Information (in millions):			
Interest paid totaled \$17,893, \$9,534 and \$8,654 in 2005, 2004 and 2003, respectively.			
Income taxes paid totaled \$789, \$638 and \$717 in 2005, 2004 and 2003, respectively.			

See Notes to Consolidated Financial Statements.

LEHMAN BROTHERS HOLDINGS INC.
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Note 1 Summary of Significant Accounting Policies

Description of Business

Lehman Brothers Holdings Inc. ("Holdings") and subsidiaries (collectively, the "Company," "Lehman Brothers," "we," "us" or "our") is one of the leading global investment banks serving institutional, corporate, government and high-net-worth individual clients. Our worldwide headquarters in New York and regional headquarters in London and Tokyo are complemented by offices in additional locations in North America, Europe, the Middle East, Latin America and the Asia Pacific region. We are engaged primarily in providing financial services. The principal U.S., European, and Asian subsidiaries of Holdings are Lehman Brothers Inc. ("LBI"), a U.S. registered broker-dealer, Lehman Brothers International (Europe) ("LBIE"), an authorized investment firm in the United Kingdom and Lehman Brothers Japan, a registered securities company in Japan, respectively.

Basis of Presentation

The Consolidated Financial Statements are prepared in conformity with generally accepted accounting principles, and include the accounts of Holdings, our subsidiaries, and all other entities in which we have a controlling financial interest or are considered to be the primary beneficiary. All material intercompany accounts and transactions have been eliminated in consolidation. Certain prior-period amounts reflect reclassifications to conform to the current year's presentation.

Use of Estimates

Generally accepted accounting principles require management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Management estimates are required in determining the valuation of inventory positions, particularly over-the-counter ("OTC") derivatives, certain commercial mortgage loans and investments in real estate, certain high-yield positions, private equity and other principal investments, and non-investment-grade retained interests. Additionally, significant management estimates are required in assessing the realizability of deferred tax assets, the fair value of assets and liabilities acquired in a business acquisition, the accounting treatment of QSPEs and VIEs, the outcome of litigation, the fair value of equity-based compensation awards and determining the allocation of the cost of acquired businesses to identifiable intangible assets and goodwill and determining the amount of the real estate reconfiguration charges. Management believes the estimates used in preparing the financial statements are reasonable and prudent. Actual results could differ from these estimates.

Consolidation Accounting Policies

Operating companies. Financial Accounting Standards Board ("FASB") Interpretation No. 46(R), "*Consolidation of Variable Interest Entities* (revised December 2003)-an interpretation of ARB No. 51", ("FIN 46(R)"), defines the criteria necessary to be considered an operating company (i.e., a voting-interest entity) for which the consolidation accounting guidance of Statement of Financial Accounting Standards ("SFAS") No. 94, "*Consolidation of All Majority-Owned Subsidiaries*", ("SFAS 94") should be applied. As required by SFAS 94, we consolidate operating companies in which we have a controlling financial interest. The usual condition for a controlling financial interest is ownership of a majority of the voting interest. FIN 46(R) defines operating companies as businesses that have sufficient legal equity to absorb the entities' expected losses (presumed to require minimum 10% equity) and, in each case, for which the equity holders have substantive voting rights and participate substantively in the gains and losses of such entities. Operating companies in which we exercise significant influence but do not control are accounted for under the equity method. Significant influence generally is deemed to exist when we own 20% to 50% of the voting equity of a corporation, or when we hold at least 3% of a limited partnership interest.

Special purpose entities. Special purpose entities ("SPEs") are corporations, trusts or partnerships that are established for a limited purpose. SPEs by their nature generally do not provide equity owners with significant voting powers because the SPE documents govern all material decisions. There are two types of SPEs: qualifying special purpose entities ("QSPEs") and variable interest entities ("VIEs").

A QSPE generally can be described as an entity whose permitted activities are limited to passively holding financial assets and distributing cash flows to investors based on pre-set terms. Our primary involvement with SPEs relates to securitization transactions in which transferred assets, including mortgages, loans, receivables and other assets, are sold to an SPE that qualifies as a QSPE under SFAS No. 140, "*Accounting for Transfers and Servicing of Financial Assets*

LEHMAN BROTHERS HOLDINGS INC.
Notes to Consolidated Financial Statements

and Extinguishments of Liabilities". ("SFAS 140"). In accordance with SFAS 140 we do not consolidate QSPEs. Rather, we recognize only our retained interests in the QSPEs, if any. We account for such retained interests at fair value.

Certain SPEs do not meet the QSPE criteria because their permitted activities are not sufficiently limited or because the assets are not deemed qualifying financial instruments (e.g., real estate). Such SPEs are referred to as VIEs and we typically use them to create securities with a unique risk profile desired by investors, as a means of intermediating financial risk or to make an investment in real estate. In the normal course of business we may establish VIEs, sell assets to VIEs, underwrite, distribute, and make a market in securities issued by VIEs, transact derivatives with VIEs, own securities or residual interests in VIEs, and provide liquidity or other guarantees to VIEs. Under FIN 46(R), we are required to consolidate a VIE if we are deemed to be the primary beneficiary of such entity. The primary beneficiary is the party that has either a majority of the expected losses or a majority of the expected residual returns of such entity, as defined. In 2004 we adopted FIN 46(R) for all VIEs in which we hold a variable interest. The effect of adopting FIN 46(R) in fiscal 2004 was not material to our financial condition or results of operations.

For a further discussion of our securitization activities and our involvement with VIEs see Note 3 to the Consolidated Financial Statements.

Revenue Recognition Policies

Principal transactions. Financial instruments classified as Financial instruments and other inventory positions owned and Financial instruments and other inventory positions sold but not yet purchased (both of which are recorded on a trade-date basis) are valued at market or fair value, as appropriate, with unrealized gains and losses reflected in Principal transactions in the Consolidated Statement of Income.

Investment banking. Underwriting revenues, net of related underwriting expenses, and revenues for merger and acquisition advisory and other investment-banking-related services are recognized when services for the transactions are completed. Direct costs associated with advisory services are recorded as non-personnel expenses, net of client reimbursements.

Commissions. Commissions primarily include fees from executing and clearing client transactions on stocks, options and futures markets worldwide. These fees are recognized on a trade-date basis.

Interest and dividends revenue and interest expense. We recognize contractual interest on Financial instruments and other inventory positions owned and Financial instruments and other inventory positions sold but not yet purchased on an accrual basis as a component of Interest and dividends revenue and Interest expense, respectively. Interest flows on derivative transactions are included as part of the mark-to-market valuation of these contracts in Principal transactions in the Consolidated Statement of Income and are not recognized as a component of interest revenue or expense. We account for our secured financing activities and short-and long-term borrowings on an accrual basis with related interest recorded as interest revenue or interest expense, as applicable.

Asset management and other. Investment advisory fees are recorded as earned. Generally, high-net-worth and institutional clients are charged or billed quarterly based on the account's net asset value at the end of a quarter. Investment advisory and administrative fees earned from our mutual fund business (the "Funds") are charged monthly to the Funds based on average daily net assets under management. In certain circumstances, we receive asset management incentive fees when the return on assets under management exceeds specified benchmarks. Such incentive fees generally are based on investment performance over a twelve-month period and are not subject to adjustment after the measurement period ends. Accordingly, such incentive fees are recognized when the measurement period ends. We receive private equity incentive fees when the return on certain private equity funds' investments exceeds specified threshold returns. Such incentive fees typically are based on investment periods in excess of one year, and future investment underperformance could require amounts previously distributed to us to be returned to the funds. Accordingly, these incentive fees are recognized when all material contingencies have been substantially resolved.

Financial Instruments and Other Inventory Positions

Financial instruments classified as Financial instruments and other inventory positions owned, including loans, and Financial instruments and other inventory positions sold but not yet purchased are recognized on a trade-date basis and are carried at market or fair value, or amounts which approximate fair value, with unrealized gains and losses reflected in Principal transactions in the Consolidated Statement of Income. Lending commitments also are recorded at fair value, with unrealized gains or losses recognized in Principal transactions in the Consolidated Statement of Income.

LEHMAN BROTHERS HOLDINGS INC.
Notes to Consolidated Financial Statements

We follow the American Institute of Certified Public Accountants ("AICPA") Audit and Accounting Guide, *"Brokers and Dealers in Securities"*, (the "Guide") when determining market or fair value for financial instruments. Market value generally is determined based on listed prices or broker quotes. In certain instances, such price quotations may be deemed unreliable when the instruments are thinly traded or when we hold a substantial block of a particular security and the listed price is not deemed to be readily realizable. In accordance with the Guide, in these instances we determine fair value based on management's best estimate, giving appropriate consideration to reported prices and the extent of public trading in similar securities, the discount from the listed price associated with the cost at the date of acquisition, and the size of the position held in relation to the liquidity in the market, among other factors. When listed prices or broker quotes are not available, we determine fair value based on pricing models or other valuation techniques, including the use of implied pricing from similar instruments. We typically use pricing models to derive fair value based on the net present value of estimated future cash flows including adjustments, when appropriate, for liquidity, credit and/or other factors. We account for real estate positions held for sale at the lower of cost or fair value with gains or losses recognized in Principal transactions in the Consolidated Statement of Income.

All firm-owned securities pledged to counterparties that have the right, by contract or custom, to sell or repledge the securities are classified as Financial instruments and other inventory positions owned, and are disclosed as pledged as collateral, as required by SFAS 140.

Derivative financial instruments. Derivatives are financial instruments whose value is based on an underlying asset (e.g., Treasury bond), index (e.g., S&P 500) or reference rate (e.g., LIBOR), and include futures, forwards, swaps, option contracts, or other financial instruments with similar characteristics. A derivative contract generally represents a future commitment to exchange interest payment streams or currencies based on the contract or notional amount or to purchase or sell other financial instruments at specified terms on a specified date. OTC derivative products are privately-negotiated contractual agreements that can be tailored to meet individual client needs and include forwards, swaps and certain options including caps, collars and floors. Exchange-traded derivative products are standardized contracts transacted through regulated exchanges and include futures and certain option contracts listed on an exchange.

Derivatives are recorded at market or fair value in the Consolidated Statement of Financial Condition on a net-by-counterparty basis when a legal right of offset exists and are netted across products when such provisions are stated in the master netting agreement. Cash collateral received is netted on a counterparty basis, provided legal right of offset exists. Derivatives often are referred to as off-balance-sheet instruments because neither their notional amounts nor the underlying instruments are reflected as assets or liabilities of the Company. Instead, the market or fair values related to the derivative transactions are reported in the Consolidated Statement of Financial Condition as assets or liabilities. In Derivatives and other contractual agreements, as applicable. Margin on futures contracts is included in receivables and payables from/to brokers, dealers and clearing organizations, as applicable. Changes in fair values of derivatives are recorded in Principal transactions in the Consolidated Statement of Income. Market or fair value generally is determined either by quoted market prices (for exchange-traded futures and options) or pricing models (for swaps, forwards and options). Pricing models use a series of market inputs to determine the present value of future cash flows with adjustments, as required, for credit risk and liquidity risk. Credit-related valuation adjustments incorporate historical experience and estimates of expected losses. Additional valuation adjustments may be recorded, as deemed appropriate, for new or complex products or for positions with significant concentrations. These adjustments are integral components of the mark-to-market process.

We follow Emerging Issues Task Force ("EITF") Issue No. 02-3, *"Issues Involved in Accounting for Derivative Contracts Held for Trading Purposes and Contracts Involved in Energy Trading and Risk Management Activities"*, ("EITF 02-3") when marking to market our derivative contracts. Under EITF 02-3, recognition of a trading profit at inception of a derivative transaction is prohibited unless the fair value of that derivative is obtained from a quoted market price, supported by comparison to other observable market transactions or based on a valuation technique incorporating observable market data. Subsequent to the transaction date, we recognize trading profits deferred at inception of the derivative transaction in the period in which the valuation of such instrument becomes observable.

As an end user, we primarily use derivatives to modify the interest rate characteristics of our long-term debt and secured financing activities. We also use equity derivatives to hedge our exposure to equity price risk embedded in certain of our debt obligations and foreign exchange forwards to manage the currency exposure related to our net investment in non-U.S.-dollar functional currency operations (collectively, "End-User Derivative Activities"). In many hedging relationships both the derivative and the hedged item are marked to market through earnings ("fair value hedge"). In these instances, the

LEHMAN BROTHERS HOLDINGS INC.
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hedge relationship is highly effective and the mark to market on the derivative and the hedged item virtually offset. Certain derivatives embedded in long-term debt are bifurcated from the debt and marked to market through earnings.

We use fair value hedges primarily to convert a substantial portion of our fixed-rate debt and certain long-term secured financing activities to floating interest rates. Any hedge ineffectiveness in these relationships is recorded in Interest expense in the Consolidated Statement of Income. Gains or losses from revaluing foreign exchange contracts associated with hedging our net investments in non-U.S.-dollar functional currency operations are reported within Accumulated other comprehensive income in Stockholders' equity. Unrealized receivables/payables resulting from the mark to market of end-user derivatives are included in Financial instruments and other inventory positions owned or Financial instruments and other inventory positions sold but not yet purchased.

Private equity investments. We carry our private equity investments, including our partnership interests, at fair value. Certain of our private equity positions are less liquid and often contain trading restrictions. Fair value is determined based upon our assessment of the underlying investments incorporating valuations that consider expected cash flows, earnings multiples and/or comparisons to similar market transactions. Valuation adjustments reflecting consideration of credit quality, concentration risk, sales restrictions and other liquidity factors are an integral part of pricing these instruments.

Securitization Activities. In accordance with SFAS 140, we recognize transfers of financial assets as sales provided control has been relinquished. Control is deemed to be relinquished only when all of the following conditions have been met: (i) the assets have been isolated from the transferor, even in bankruptcy or other receivership (true-sale opinions are required); (ii) the transferee has the right to pledge or exchange the assets received and (iii) the transferor has not maintained effective control over the transferred assets (e.g., a unilateral ability to repurchase a unique or specific asset).

Securities Received as Collateral and Obligation to Return Securities Received as Collateral

When we act as the lender in a securities-lending agreement and we receive securities that can be pledged or sold as collateral, we recognize in the Consolidated Statement of Financial Condition an asset, representing the securities received (Securities received as collateral) and a liability, representing the obligation to return those securities (Obligation to return securities received as collateral).

Secured Financing Activities

Repurchase and resale agreements. Securities purchased under agreements to resell and Securities sold under agreements to repurchase, which are treated as financing transactions for financial reporting purposes, are collateralized primarily by government and government agency securities and are carried net by counterparty, when permitted, at the amounts at which the securities subsequently will be resold or repurchased plus accrued interest. It is our policy to take possession of securities purchased under agreements to resell. We monitor the market value of the underlying positions on a daily basis compared with the related receivable or payable balances, including accrued interest. We require counterparties to deposit additional collateral or return collateral pledged, as necessary, to ensure the market value of the underlying collateral remains sufficient. Financial instruments and other inventory positions owned that are financed under repurchase agreements are carried at market value, with unrealized gains and losses reflected in Principal transactions in the Consolidated Statement of Income.

We use interest rate swaps as an end-user to modify the interest rate exposure associated with certain fixed-rate resale and repurchase agreements. We adjust the carrying value of these secured financing transactions that have been designated as the hedged item.

Securities borrowed and loaned. Securities borrowed and securities loaned are carried at the amount of cash collateral advanced or received plus accrued interest. It is our policy to value the securities borrowed and loaned on a daily basis and to obtain additional cash as necessary to ensure such transactions are adequately collateralized.

Other secured borrowings. Other secured borrowings principally reflects non-recourse financing, and is recorded at contractual amounts plus accrued interest.

Long-Lived Assets

Property, equipment and leasehold improvements are recorded at historical cost, net of accumulated depreciation and amortization. Depreciation is recognized using the straight-line method over the estimated useful lives of the assets. Buildings are depreciated up to a maximum of 40 years. Leasehold improvements are amortized over the lesser of their

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useful lives or the terms of the underlying leases, ranging up to 30 years. Equipment, furniture and fixtures are depreciated over periods of up to 15 years. Internal-use software that qualifies for capitalization under AICPA Statement of Position 98-1, "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use", is capitalized and subsequently amortized over the estimated useful life of the software, generally three years, with a maximum of seven years. We review long-lived assets for impairment periodically and whenever events or changes in circumstances indicate the carrying amounts of the assets may be impaired. If the expected future undiscounted cash flows are less than the carrying amount of the asset, an impairment loss would be recognized to the extent the carrying value of such asset exceeded its fair value.

Identifiable Intangible Assets and Goodwill

Identifiable intangible assets with finite lives are amortized over their expected useful lives. Identifiable intangible assets with indefinite lives and goodwill are not amortized. Instead, these assets are evaluated at least annually for impairment. Goodwill is reduced upon the recognition of certain acquired net operating loss carryforward benefits.

Equity-Based Compensation

SFAS No. 123, "Accounting for Stock-Based Compensation", ("SFAS 123") established financial accounting and reporting standards for equity-based employee and non-employee compensation. SFAS 123 permits companies to account for equity-based employee compensation using the intrinsic-value method prescribed by Accounting Principles Board ("APB") Opinion No. 25, "Accounting for Stock Issued to Employees", ("APB 25"), or using the fair-value method prescribed by SFAS 123. Through November 30, 2003, we followed APB 25 and its related interpretations to account for equity-based employee compensation. Accordingly, no compensation expense was recognized for stock option awards because the exercise price equaled or exceeded the market value of our common stock on the grant date.

In 2004, we adopted the fair value recognition provisions of SFAS 123 as amended by SFAS No. 148, "Accounting for Stock-Based Compensation-Transition and Disclosure, an amendment of FASB Statement No. 123", using the prospective adoption method. Under this method of adoption, compensation expense is recognized based on the fair value of stock options and RSUs granted for 2004 and future years over the related service periods. Stock options granted for the years ended November 30, 2003 and before continue to be accounted for under APB 25. Adoption of SFAS 123 also required us to change the fair value measurement method for RSUs. Under SFAS 123, the fair value measurement of an RSU must include a discount from the market value of an unrestricted share of common stock on the RSU grant date for selling restrictions subsequent to the vesting date. RSUs granted prior to 2004 continue to be measured in accordance with APB 25 and, accordingly, a discount from the market value of an unrestricted share of common stock on the RSU grant date is not recognized for selling restrictions subsequent to the vesting date. Under both APB 25 and SFAS 123, compensation expense for RSUs with future service requirements is recognized over the relevant stated vesting periods of the awards. See Accounting Developments below for a discussion of SFAS No. 123(R), "Share-Based Payment" ("SFAS 123(R)"), which we are required to adopt on December 1, 2005.

Our equity-based employee award plans provide for the accrual of non-cash dividend equivalents on outstanding RSUs. These dividend equivalents on RSUs are charged to retained earnings as declared.

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Notes to Consolidated Financial Statements

The following table illustrates the effect on net income and earnings per share for the years ended November 30, 2005, 2004, and 2003 if the fair-value-based retroactive method prescribed by SFAS 123 had been applied to all awards granted prior to fiscal year 2004:

Equity Based Compensation-Pro Forma Net Income and Earnings per Share

In millions, except per share data Year ended November 30	2005	2004	2003
Net income, as reported	\$ 3,260	\$ 2,369	\$ 1,699
Add: stock-based employee compensation expense included in reported net income, net of related tax effect	611	464	362
Deduct: stock-based employee compensation expense determined under the fair-value-based method for all awards, net of related tax effect	(694)	(623)	(534)
Pro forma net income	\$ 3,177	\$ 2,210	\$ 1,527
Earnings per share:			
Basic, as reported	\$ 11.47	\$ 8.36	\$ 6.71
Basic, pro forma	\$ 11.17	\$ 7.78	\$ 6.01
Diluted, as reported	\$ 10.87	\$ 7.90	\$ 6.35
Diluted, pro forma	\$ 10.64	\$ 7.42	\$ 5.77

We used the Black-Scholes option-pricing model to measure the fair value of the stock options granted during 2005 and 2004, as well as for the measurement of fair value utilized to quantify the pro forma effects on net income and earnings per share of the fair value of stock options outstanding during 2005, 2004 and 2003. Based on the results of the model, the weighted-average fair values of the stock options granted were \$26.48, \$19.26, and \$22.02 for 2005, 2004 and 2003, respectively. The weighted-average assumptions used for 2005, 2004 and 2003 were as follows:

Weighted Average Black-Scholes Assumptions

Year ended November 30	2005	2004	2003
Risk-free interest rate	3.97%	3.04%	3.10%
Expected volatility	23.73%	28.09%	35.00%
Dividends per share	\$0.80	\$0.64	\$0.48
Expected life	3.9 years	3.7 years	4.6 years

The increase in the weighted-average fair value price of stock options granted in 2005 compared with 2004 resulted primarily from the higher price of the Company's stock on the grant dates. The expected volatility declined due to lower volatility in our stock over the historical and future periods the Company uses to determine volatility.

Earnings per Share

We compute earnings per share ("EPS") in accordance with SFAS No. 128, "Earnings per Share". Basic EPS is computed by dividing net income applicable to common stock by the weighted-average number of common shares outstanding, which includes restricted stock units for which service has been provided. Diluted EPS includes the components of basic EPS and also includes the dilutive effects of restricted stock units for which service has not yet been provided and employee stock options. See Notes 13 and 14 to the Consolidated Financial Statements for additional information about EPS.

Income Taxes

We account for income taxes in accordance with SFAS No. 109, "Accounting for Income Taxes", ("SFAS 109"). We recognize the current and deferred tax consequences of all transactions that have been recognized in the financial statements using the provisions of the enacted tax laws. Deferred tax assets are recognized for temporary differences that will result in deductible amounts in future years and for tax loss carry-forwards. We record a valuation allowance to reduce deferred tax assets to an amount that more likely than not will be realized. Deferred tax liabilities are recognized for temporary differences that will result in taxable income in future years. Contingent liabilities related to income taxes are recorded when probable and reasonably estimable in accordance with SFAS No. 5, "Accounting for Contingencies".

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Cash Equivalents

Cash equivalents include highly liquid investments not held for resale with maturities of three months or less when we acquire them.

Foreign Currency Translation

Assets and liabilities of foreign subsidiaries having non-U.S.-dollar functional currencies are translated at exchange rates at the Consolidated Statement of Financial Condition date. Revenues and expenses are translated at average exchange rates during the period. The gains or losses resulting from translating foreign currency financial statements into U.S. dollars, net of hedging gains or losses and taxes, are included in Accumulated other comprehensive income, a component of Stockholders' equity. Gains or losses resulting from foreign currency transactions are included in the Consolidated Statement of Income.

Accounting Developments

FSP FAS 109-2. In December 2004, the FASB issued FSP FAS 109-2 "*Accounting and Disclosure Guidance for the Foreign Earnings Repatriation Provision within the American Jobs Creation Act of 2004*", ("FSP FAS 109-2") which provides guidance on the accounting implications of the American Jobs Creation Act of 2004 (the "Act") related to the one-time tax benefit for the repatriation of foreign earnings. The Act creates a temporary incentive for U.S. corporations to repatriate accumulated income earned outside the U.S. by providing an 85 percent dividends received deduction for certain dividends from controlled foreign corporations. We have reviewed the Act to determine the implications of repatriating all or a portion of our accumulated non-U.S. retained earnings pool and determined that we would not generate any material tax benefits associated with the Act, as any amounts able to be repatriated under the Act would not be material.

SFAS 123(R). In December 2004, the FASB issued SFAS No. 123(R), "*Share-Based Payment*", ("SFAS 123(R)"), which we will adopt on December 1, 2005. SFAS 123(R) requires public companies to recognize expense in the income statement for the grant-date fair value of awards of equity instruments granted to employees. Expense is to be recognized over the period during which employees are required to provide service.

SFAS 123(R) also clarifies and expands the guidance in SFAS 123 in several areas, including measuring fair value and attributing compensation cost to reporting periods. Under the modified prospective transition method applied in the adoption of SFAS 123(R), compensation cost will be recognized for the unamortized portion of outstanding awards granted prior to the adoption of SFAS 123. Upon adoption of SFAS 123(R) on December 1, 2005, we will recognize an after-tax gain of approximately \$47 million as the cumulative effect of a change in accounting principle, primarily attributable to the requirement to estimate forfeitures at the date of grant instead of recognizing them as incurred. We do not expect adoption of SFAS 123(R) otherwise will have a material effect on our consolidated financial statements.

SFAS 123(R) generally requires equity-based awards granted to retirement-eligible employees, and those employees with non-substantive non-compete agreements to be expensed immediately. For stock-based awards granted prior to our adoption of SFAS 123(R), compensation cost for retirement eligible employees and employees subject to non-compete agreements, is recognized over the service period specified in the award. We accelerate the recognition of compensation cost if and when a retirement-eligible employee or an employee subject to a non-compete agreement, leaves the Company.

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The following table sets forth the pro forma net income that would have been reported for the years ended November 30, 2005, 2004 and 2003 if equity-based awards granted to retirement-eligible employees, and those with non-substantive non-compete agreements had been expensed immediately as required by SFAS 123(R):

Pro Forma Net Income

In millions				
Year ended November 30	2005	2004	2003	
Net income, as reported	\$ 3,260	\$ 2,369	\$ 1,699	
Add: stock-based employee compensation expense included in reported net income, net of related tax effect	611	464	362	
Deduct: stock-based employee compensation expense, net of related tax effect, determined under SFAS 123 (R)	(867)	(643)	(447)	
Pro forma net income	\$ 3,004	\$ 2,190	\$ 1,614	

EITF Issue No. 04-5. In June 2005, the FASB ratified the consensus reached in EITF Issue No. 04-5, "Determining Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights", ("EITF 04-5") which requires general partners (or managing members in the case of limited liability companies) to consolidate their partnerships or to provide limited partners with rights to remove the general partner or to terminate the partnership. As the general partner of numerous private equity, merchant banking and asset management partnerships, we adopted EITF 04-5 immediately for partnerships formed or modified after June 29, 2005. For partnerships formed on or before June 29, 2005 that have not been modified, we are required to adopt EITF 04-5 on December 1, 2006 in a manner similar to a cumulative-effect-type adjustment or by retrospective application. We do not expect adoption of EITF 04-5 for partnerships formed on or before June 29, 2005 that have not been modified will have a material effect on our consolidated financial statements.

Note 2 Financial Instruments

Financial Instruments and Other Inventory Positions

Financial instruments and other inventory positions owned and Financial instruments and other inventory positions sold but not yet purchased were comprised of the following:

In millions	Owned		Sold But Not Yet Purchased	
	2005	2004	2005	2004
Mortgages, mortgage-backed and real estate inventory positions	\$ 62,216	\$ 43,831	\$ 63	\$ 246
Corporate equities	33,426	26,772	21,018	23,019
Corporate debt and other	30,182	24,948	8,997	10,988
Government and agencies	30,079	29,829	64,743	46,697
Derivatives and other contractual agreements	18,045	17,459	15,560	15,242
Certificates of deposit and other money market instruments	3,490	1,629	196	89
	\$ 177,438	\$ 144,468	\$ 110,577	\$ 96,281

Mortgages, Mortgage-backed and Real Estate Inventory Positions

Mortgages and mortgage-backed positions include mortgage loans (both residential and commercial), non-agency mortgage-backed securities and real estate investments held for sale. We originate residential and commercial mortgage loans as part of our mortgage trading and securitization activities and are a market leader in mortgage-backed securities trading. We securitized approximately \$133 billion and \$101 billion of residential mortgage loans in 2005 and 2004, respectively, including both originated loans and those we acquired in the secondary market. We originated approximately \$85 billion and \$65 billion of residential mortgage loans in 2005 and 2004, respectively. In addition, we originated approximately \$27 billion and \$13 billion of commercial mortgage loans in 2005 and 2004, respectively, the majority of which has been sold through securitization or syndication activities. See Note 3 to the Consolidated Financial Statements for additional information about our securitization activities. We record mortgage loans at fair

LEHMAN BROTHERS HOLDINGS INC.
Notes to Consolidated Financial Statements

As of December 1, 2005, Holdings became regulated by the SEC as a consolidated supervised entity ("CSE"). As such, Holdings is subject to group-wide supervision and examination by the SEC and, accordingly, we are subject to minimum capital requirements on a consolidated basis. LBI is also authorized to calculate its net capital under provisions as specified by the SEC applicable rules.

Note 13 Earnings per Share

Earnings per share was calculated as follows:

Earnings per Share

In millions, except per share data
Year ended November 30

	2005	2004	2003
Numerator:			
Net income	\$ 3,260	\$ 2,369	\$ 1,699
Preferred stock dividends	69	72	50
Numerator for basic earnings per share-net income applicable to common stock	\$ 3,191	\$ 2,297	\$ 1,649
Denominator:			
Denominator for basic earnings per share-weighted-average common shares	278.2	274.7	245.7
Effect of dilutive securities:			
Employee stock options	12.7	13.8	12.2
Restricted stock units	2.7	2.2	2.0
Dilutive potential common shares	15.4	16.0	14.2
Denominator for diluted earnings per share-weighted-average common and dilutive potential common shares ⁽¹⁾	293.6	290.7	259.9
Basic earnings per share	\$ 11.47	\$ 8.36	\$ 6.71
Diluted earnings per share	\$ 10.87	\$ 7.90	\$ 6.35
(1) Anti-dilutive options and restricted stock units excluded from the calculations of diluted earnings per share	4.3	2.0	8.0

Note 14 Employee Incentive Plans

In 2004 the Company adopted the fair value recognition provisions of SFAS 123 using the prospective adoption method. The Company's adoption of SFAS 123 on a prospective basis in 2004 resulted in a change in measurement for employee stock awards. See Note 1 for a further discussion.

Employee Stock Purchase Plan

On June 30, 2004, the Employee Stock Purchase Plan (the "ESPP") expired following the completion of its 10-year term as approved by shareholders. The ESPP allowed employees to purchase Common Stock at a 15% discount from market value, with a maximum of \$25,000 in annual aggregate purchases by any one individual. At November 30, 2004 6.3 million shares of Common Stock had cumulatively been purchased by eligible employees through the ESPP.

1994 Management Ownership Plan

On May 31, 2004 the Lehman Brothers Holdings Inc. Management Ownership Plan (the "1994 Plan") expired following the completion of its 10-year term. The 1994 Plan provided for the issuance of RSUs, performance stock units ("PSUs"), stock options and other equity awards for a period of up to ten years to eligible employees. At November 30, 2005, RSU, PSU and stock option awards with respect to 33.1 million shares of Common Stock have been made under the 1994 Plan, of which 3.1 million are outstanding and 30.0 million have been converted to freely transferable Common Stock.

LEHMAN BROTHERS HOLDINGS INC.
Notes to Consolidated Financial Statements

1996 Management Ownership Plan

The 1996 Management Ownership Plan (the "1996 Plan"), under which awards similar to those of the 1994 Plan may be granted, provides for up to 42.0 million shares of Common Stock to be subject to awards. At November 30, 2005, RSU, PSU and stock option awards with respect to 39.5 million shares of Common Stock have been made under the 1996 Plan of which 9.5 million are outstanding and 30.0 million have been converted to freely transferable Common Stock.

Employee Incentive Plan

The Employee Incentive Plan ("EIP") has provisions similar to the 1994 Plan and the 1996 Plan, and authorization from the Board of Directors to issue up to 246.0 million shares of Common Stock that may be subject to awards. At November 30, 2005 awards with respect to 231.9 million shares of Common Stock have been made under the EIP of which 93.0 million are outstanding and 138.9 million have been converted to freely transferable Common Stock.

Stock Incentive Plan

The Stock Incentive Plan ("SIP") has provisions similar to the 1994 Plan, the 1996 Plan and the EIP, and authorization from the Board of Directors to issue up to 10.0 million shares of Common Stock that may be subject to awards. At November 30, 2005 awards with respect to 2.3 million shares of Common Stock have been made under the SIP of which 2.3 million are outstanding.

1999 Long Term Incentive Plan

The 1999 Neuberger Berman Inc. Long-Term Incentive Plan (the "LTIP") provided for the grant of restricted stock, restricted units, incentive stock, incentive units, deferred shares, supplemental units and stock options. The total number of shares of Common Stock that may be issued under the LTIP may not exceed 7.7 million. At November 30, 2005, awards with respect to approximately 6.7 million shares of Common Stock have been made under the LTIP, of which approximately 3.7 million restricted shares, RSUs and stock options are outstanding and 3.0 million have been converted to freely transferable Common Stock.

1999 Directors Stock Incentive Plan

The 1999 Neuberger Berman Inc. Directors Stock Incentive Plan (the "DSIP") provided for the grant of stock options or restricted stock to non-employee members of Neuberger's board of directors. Non-employee directors could elect to exchange a portion of their annual cash retainer paid by Neuberger for services rendered as a director for restricted stock. At November 30, 2004, awards with respect to approximately 62,000 shares have been made under the DSIP of which all shares have been converted to freely transferable Common Stock. We do not intend to grant additional awards from the DSIP.

Restricted Stock Units

Eligible employees receive RSUs, in lieu of cash, as a portion of their total compensation. There is no further cost to employees associated with the RSU awards. For awards granted prior to 2004, we measure compensation cost for RSUs based on the market value of our Common Stock at the grant date in accordance with APB 25. For awards granted beginning in 2004 we measure compensation cost based on the market value of our Common Stock at the grant date less a discount for sale restrictions subsequent to the vesting date in accordance with our adoption of SFAS 123 on a prospective basis. RSUs granted in each of the years presented contain selling restrictions subsequent to the vesting date. We amortize the RSU awards over the applicable service periods. RSU awards made to employees have various vesting provisions and generally convert to unrestricted freely transferable Common Stock five years from the grant date. We accrue a dividend equivalent on each RSU outstanding (in the form of additional RSUs), based on dividends declared on our Common Stock.

LEHMAN BROTHERS HOLDINGS INC.
Notes to Consolidated Financial Statements

The following table summarizes RSUs outstanding under stock-based incentive plans:

Restricted Stock Units

	2005	2004	2003
Balance, beginning of year	64,242,393	64,343,313	69,338,068
Granted	13,965,142	14,899,012	14,796,772 ⁽¹⁾
Canceled	(1,512,954)	(1,276,002)	(1,447,319)
Exchanged for stock without restrictions	(16,485,744)	(13,723,930)	(18,344,208)
Balance, end of year	60,208,837	64,242,393	64,343,313
Shares held in RSU Trust	(34,558,884)	(38,861,068)	(33,408,893)
RSUs outstanding, net of shares held in RSU trust	25,649,953	25,381,325	30,934,420

⁽¹⁾ Includes approximately 1.7 million RSUs granted in 2003 related to our acquisition of Neuberger. See Note 5 to the Consolidated Financial Statements for additional information about the Neuberger acquisition.

Of the RSUs outstanding at November 30, 2005, approximately 36 million were amortized and included in basic and diluted earnings per share, approximately 10 million will be amortized during 2006, and the remainder will be amortized subsequent to November 30, 2006. See Note 11 to the Consolidated Financial Statements for additional information.

Included in the previous table are PSUs awarded to certain senior officers prior to 2004. The number of PSUs that may be earned is dependent on achieving certain performance levels within predetermined performance periods. During the performance period, these PSUs are accounted for as variable awards. At the end of a performance period, any PSUs earned will convert one-for-one to RSUs that then vest in three or more years. At November 30, 2005, approximately 11.2 million PSUs had been awarded, of which 6.0 million remained outstanding, subject to vesting and transfer restrictions. The compensation cost for the RSUs payable in satisfaction of PSUs is accrued over the combined performance and vesting periods.

Stock Options

The following table summarizes stock option activity for the years ended November 30, 2005, 2004 and 2003:

Stock Option Activity

	Options	Weighted-Average Exercise Price	Expiration Dates
Balance, November 30, 2002	83,540,492	\$ 44.21	11/03-11/12
Granted ⁽¹⁾	15,536,462	\$ 66.98	
Exercised ⁽¹⁾	(10,595,469)	\$ 28.08	
Canceled ⁽¹⁾	(1,734,835)	\$ 46.63	
Balance, November 30, 2003	86,746,650	\$ 50.21	12/03-11/13
Granted	5,423,596	\$ 80.74	
Exercised	(17,167,352)	\$ 36.36	
Canceled	(1,459,299)	\$ 56.48	
Balance, November 30, 2004	73,543,595	\$ 55.57	12/04-11/14
Granted	3,524,013	\$ 111.53	
Exercised	(25,537,742)	\$ 48.76	
Canceled	(654,703)	\$ 66.76	
Balance, November 30, 2005	50,875,163	\$ 62.72	12/05-11/15

⁽¹⁾ Includes approximately 4.3 million stock options granted, 0.3 million stock options exercised, and 0.1 million stock options canceled in 2003 related to our acquisition of Neuberger. See Note 5 to the Consolidated Financial Statements for additional information about the Neuberger acquisition.

LEHMAN BROTHERS HOLDINGS INC.
Notes to Consolidated Financial Statements

The exercise price for all stock options awarded has been equal to the market price of Common Stock on the day of grant. The table below provides further details related to stock options outstanding at November 30, 2005.

Stock Options

Range of Exercise Prices	Options Outstanding			Options Exercisable		
	Number Outstanding	Weighted-Average Exercise Price	Weighted Average Remaining Contractual Life (in years)	Number Exercisable	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (in years)
\$20.00-\$29.99	1,797,889	\$ 20.69	3.01	1,797,889	\$ 20.69	3.01
\$30.00-\$39.99	1,377,796	\$ 37.16	4.03	1,377,796	\$ 37.16	4.03
\$40.00-\$49.99	8,295,915	\$ 47.78	5.05	5,162,629	\$ 48.47	4.50
\$50.00-\$59.99	14,324,484	\$ 54.03	6.13	8,629,809	\$ 54.43	5.64
\$60.00-\$69.99	6,539,260	\$ 63.49	4.58	3,285,498	\$ 63.58	3.19
\$70.00-\$79.99	11,545,366	\$ 71.57	5.98	5,840,136	\$ 71.70	4.47
\$80.00-\$89.99	4,777,248	\$ 85.73	5.02	225,460	\$ 85.50	5.33
\$90.00-\$99.99	22,500	\$ 93.30	9.34	0	n/a	n/a
\$100.00-\$149.99	2,194,705	\$ 127.20	6.37	0	n/a	n/a
	50,875,163	\$ 62.72	5.46	26,319,217	\$ 55.29	4.58

Restricted Stock

In connection with the 2003 Neuberger acquisition, we issued approximately 806,000 shares of restricted Common Stock to replace outstanding shares of Neuberger restricted Common Stock. During 2005, we awarded approximately 7,767 shares of our restricted Common Stock under the LTIP.

The following table summarizes restricted stock activity for the years ended November 30, 2005 and 2004:

Restricted Stock

	2005	2004
Balance, beginning of year	770,846	805,587
Granted	7,767	223,889
Canceled	(18,723)	(27,325)
Exchanged for stock without restrictions	(238,702)	(231,305)
Balance, end of year	521,188	770,846

Total compensation cost for stock-based awards recognized during 2005, 2004 and 2003 was approximately \$1,055 million, \$800 million and \$625 million, respectively.

Exhibit E

**LEHMAN BROTHERS HOLDINGS INC.
EMPLOYEE INCENTIVE PLAN
As amended through November 8, 2007**

SECTION 1 — PURPOSE

The purpose of the Lehman Brothers Holdings Inc. Employee Incentive Plan (the "Plan") is to strengthen Lehman Brothers Holdings Inc. (the "Company") by providing selected employees of the Company with the opportunity to acquire a proprietary and vested interest in the growth and performance of the Company, thus generating an increased incentive to contribute to the Company's future success and prosperity, enhancing the value of the Company for the benefit of stockholders, and enhancing the Company's ability to attract and retain individuals of exceptional talent.

The purposes of the Plan are to be achieved through the grant of various types of stock-based awards.

SECTION 2 — DEFINITIONS

For purposes of the Plan, the capitalized terms shall have the meanings ascribed to them in Exhibit A hereof.

SECTION 3 — SHARES SUBJECT TO THE PLAN

(a) Shares of Common Stock which may be issued under the Plan may be either authorized and unissued shares of Common Stock or authorized and issued shares of Common Stock held in the Company's treasury, or any combination thereof. Subject to adjustment as provided in Section 14, the number of shares of Common Stock with respect to which Awards (whether distributable in shares of Common Stock or in cash) may be granted under the Plan shall be 246 million shares. The maximum number of shares of Common Stock available for stock options, stock appreciation rights or Other Stock-based Awards that may be granted to a Participant during a calendar year shall not exceed two million.

(b) Notwithstanding the last sentence of Section 3(a), to the extent that the number of shares of Common Stock with respect to which Awards may be granted under the Plan to an individual in any calendar year exceeds the number of shares of Common Stock with respect to which Awards were granted under the Plan during that calendar year, such excess shall be available for grant under the Plan in succeeding calendar years.

(c) In the event that any other Award subject to repurchase or forfeiture rights is reacquired by the Company or if any Award is canceled, terminates or expires unexercised (except with respect to a stock option which terminates on the exercise of a stock appreciation right) for any reason under the Plan, any Common Stock allocated in connection with such Award shall thereafter again be available for grant pursuant to the Plan.

SECTION 4 — ELIGIBILITY

Selected employees, officers, directors and consultants to the Company and its Affiliates are eligible to be Participants in the Plan.

SECTION 5 — ADMINISTRATION

The Plan shall be administered by the Committee, which shall have the power to select those Participants who shall receive Awards and to determine the terms of such Awards. As to the selection of, and the terms of Awards granted the Committee may delegate any or all of its responsibilities to officers or employees of the Company.

The Committee's authority hereunder shall include, without limitation, the establishment of vesting schedules or exercisability in installments with respect to Awards. The Committee may, in its sole discretion, accelerate or waive vesting or exercise periods or the lapse of restrictions on all or any portion of any Award, or extend the exercisability (including to extend or provide for post-termination exercisability) of stock options or stock appreciation rights; provided that such exercisability shall not extend past ten years from the date of grant of any incentive stock options.

Subject to the provisions of the Plan, the Committee shall be authorized to interpret the Plan, to establish, amend and rescind any rules and regulations relating to the Plan, to determine the terms and provisions of any agreements entered into hereunder, and to make all other determinations necessary or advisable for the administration of the Plan. The Committee may correct any defect, supply any omission or reconcile any inconsistency in the Plan or in any Award in the manner and to the extent it shall deem desirable to carry the Plan or any such Award into effect. The determinations of the Committee in the administration of the Plan, as described herein, shall be final and conclusive.

The validity, construction and effect of the Plan and any rules and regulations relating to the Plan shall be determined in accordance with the laws of the State of Delaware and applicable Federal law.

SECTION 6 — STOCK OPTIONS

(a) Any stock options granted under the Plan shall be in such form as the Committee may from time to time approve and shall be subject to the terms and conditions provided herein and such additional terms and conditions not inconsistent with the terms of the Plan as the Committee shall deem desirable.

(b) Stock options may be granted to any Participant. Each grant of stock options shall specify whether the underlying options are intended to be incentive stock options or non-incentive stock options. In the case of incentive stock options, the terms and conditions of such grants shall be subject to and comply with such requirements as may be prescribed by Section 422(b) of the Code, as from time to time amended, and any implementing regulations, including, but not limited to, the requirement that such stock options are exercisable during the Participant's lifetime only by such Participant. The Committee shall establish the option price at the time each stock option is granted, which price shall not be less than 100 percent of the Fair Market Value of the Common Stock on the date of grant.

(c) No stock options may be exercisable later than ten years after their date of grant. The option price of each share of Common Stock as to which a stock option is exercised shall be paid in full at the time of such exercise or as otherwise permitted by the Committee. Such payment may be made at the sole discretion of the Committee, pursuant to and in accordance with criteria and guidelines established by the Committee (which criteria and guidelines may be different for executive officers and for other Participants), as the same may be modified from time to time, (i) in cash (in any form of currency acceptable to the Committee), (ii) by tender of shares of Common Stock already owned by the Participant, valued at Fair Market Value as of the date of exercise, (iii) if authorized by the Committee, by withholding pursuant to the election of the Participant, which election is subject to the disapproval of the Committee, from those shares that would otherwise be obtained upon exercise of the option a number of shares having a Fair Market Value equal to the option price, (iv) if authorized by the Committee, and in combination with services rendered by the exercising Participant, by delivery of a properly executed exercise notice together with irrevocable instructions to a securities broker (or, in the case of pledges, lender) approved by the Company to, (a) sell shares of Common Stock subject to the option and to deliver promptly to the Company a portion of the proceeds of such sale transaction on behalf of the exercising Participant to pay the option price, or (b) pledge shares of Common Stock subject to the option to a margin account maintained with such broker or lender, as security for a loan, and such broker or lender, pursuant to irrevocable instructions, delivers to the Company the loan proceeds, at the time of exercise to pay the option price, (v) by any combination of (i), (ii), (iii) or (iv) above or (vi) by other means that the Committee deems appropriate.

(d) A stock option holder may, in the discretion of the Committee, have the right to surrender a stock option or any portion thereof to the Company within 30 days following a Change in Control and to receive from the Company in exchange therefor a cash payment in an amount equal to (a) the number of

unexercised shares of Common Stock under the option which are being surrendered multiplied by (b) the excess of (i) the greater of (A) the highest price per share of Common Stock paid in connection with the Change in Control or (B) the highest Fair Market Value per share of Common Stock in the 90-day period preceding such Change in Control, over (ii) the purchase price of the option as set forth in the underlying option agreement (the foregoing, a "Limited SAR").

SECTION 7 — STOCK APPRECIATION RIGHTS

(a) Stock appreciation rights may be granted independent of any stock option or in conjunction with all or any part of any stock option granted under the Plan, either at the same time as the stock option is granted or at any later time during the term of the option. Stock appreciation rights shall be subject to such terms and conditions as determined by the Committee, not inconsistent with the provisions of the Plan.

(b) Upon exercise, a stock appreciation right shall entitle the Participant to receive from the Company an amount equal to the excess of the Fair Market Value of a share of Common Stock on the date of exercise of the stock appreciation right over the per share grant or option price, as applicable (or such lesser amount as the Committee may determine at the time of grant), multiplied by the number of shares of Common Stock with respect to which the stock appreciation right is exercised. Upon the exercise of a stock appreciation right granted in connection with a stock option, the stock option shall be canceled to the extent of the number of shares as to which the stock appreciation right is exercised, and upon the exercise of a stock option granted in connection with a stock appreciation right or the surrender of such stock option, the stock appreciation right shall be canceled to the extent of the number of shares as to which the stock option is exercised or surrendered. The Committee shall determine whether the stock appreciation right shall be settled in cash, Common Stock or a combination of cash and Common Stock.

(c) A holder of a stock appreciation right may, in the discretion of the Committee, have the right to surrender the stock appreciation right or any portion thereof to the Company within 30 days following a Change in Control and to receive from the Company in exchange therefor a cash payment in an amount equal to (a) the number of shares of Common Stock under the stock appreciation right which are being exercised, multiplied by (b) the excess of (i) the greater of (A) the highest price per share of Common Stock paid in connection with the Change in Control or (B) the highest Fair Market Value per share of Common Stock in the 90 day period preceding such Change in Control, over (ii) the per share grant price of the stock appreciation right as set forth in the underlying agreement.

SECTION 8 — OTHER STOCK-BASED AWARDS

(a) Other Awards of Common Stock and Awards that are valued in whole or in part by reference to, or otherwise based on, the Fair Market Value of Common Stock (all such Awards being referred to herein as "Other Stock-based Awards"), may be granted under the Plan in the discretion of the Committee. Other Stock-based Awards shall be in such form as the Committee shall determine, including without limitation, (i) the right to purchase shares of Common Stock, (ii) shares of Common Stock subject to restrictions on transfer until the completion of a specified period of service, the occurrence of an event or the attainment of performance objectives, each as specified by the Committee, and (iii) shares of Common Stock issuable upon the completion of a specified period of service, the occurrence of an event or the attainment of performance objectives, each as specified by the Committee. Other Stock-based Awards may be granted alone or in addition to any other Awards made under the Plan. All references in the preceding sentence to "specified period of service," in the case of Other Stock-based Awards which (i) are not in lieu of cash compensation to employees generally, (ii) are not paid to recruit a new employee in an amount of less than 5% of the total awards available for grant under the Plan or (iii) are not subject to the attainment of performance objectives, shall provide that vesting, restrictions on transfer or some other comparable restriction which incents continued performance of the recipient, will be for a period of not less than three years (although vesting or lapsing may occur in tranches over the three years), unless there is a Change in Control or the recipient retires, becomes disabled or dies. Subject to the provisions of the Plan, the Committee shall have sole and absolute discretion to determine to whom and when such Other Stock-based Awards will be made, the number of shares of Common Stock to be awarded under (or otherwise related to) such Other Stock-based Awards and all other terms and conditions of such Awards. The Committee

shall determine whether Other Stock-based Awards shall be settled in cash, Common Stock or a combination of cash and Common Stock.

(b) With respect to any restricted stock units granted under the Plan, the obligations of the Company or any Subsidiary are limited solely to the delivery of shares of Common Stock on the date when such shares of Common Stock are due to be delivered under each Agreement, and in no event shall the Company or any Subsidiary become obligated to pay cash in respect of such obligation (except that the Company or any Subsidiary may pay to Participants amounts in cash in respect of a restricted stock unit equal to cash dividends paid to a holder of shares of Common Stock, for fractional shares or for any amounts payable in cash upon the occurrence of a Change in Control).

SECTION 9 — DIVIDENDS, EQUIVALENTS AND VOTING RIGHTS

Awards other than stock options and stock appreciation rights may, at the discretion of the Committee, provide the Participant with dividends or dividend equivalents and voting rights prior to either vesting or earnout.

SECTION 10 — AWARD AGREEMENTS

Each Award under the Plan shall be evidenced by an agreement setting forth the terms and conditions, not inconsistent with the provisions of the Plan, as determined by the Committee, which shall apply to such Award.

SECTION 11 — WITHHOLDING

The Company shall have the right to deduct from all amounts paid to any Participant in cash (whether under this Plan or otherwise) any taxes required by law to be withheld therefrom. In the case of payments of Awards in the form of Common Stock, at the Committee's discretion, the Participant may be required to pay to the Company the amount of any taxes required to be withheld with respect to such Common Stock, or, in lieu thereof, the Company shall have the right to retain the number of shares of Common Stock the Fair Market Value of which equals the amount required to be withheld. Without limiting the foregoing, the Committee may, in its discretion and subject to such conditions as it shall impose, permit share withholding to be done at the Participant's election.

SECTION 12 — NON-TRANSFERABILITY

No Award shall be assignable or transferable, and no right or interest of any Participant in any Award shall be subject to any lien, obligation or liability of the Participant, except by will, the laws of descent and distribution, or as otherwise set forth in the Award agreement.

SECTION 13 — NO RIGHT TO EMPLOYMENT OR CONTINUED PARTICIPATION IN PLAN/NO RIGHTS AS STOCKHOLDERS

(a) No person shall have any claim or right to the grant of an Award, and the grant of an Award shall not be construed as giving a Participant the right to be retained in the employ of the Company or to be eligible for any subsequent Awards. Further, the Company expressly reserves the right at any time to dismiss a Participant free from any liability or any claim under the Plan, except as provided herein or in any agreement entered into hereunder.

(b) The grant of an Award shall not be construed as giving a Participant the rights of a stockholder of Common Stock unless and until shares of Common Stock have been issued to Participants pursuant to Awards hereunder.

SECTION 14 — ADJUSTMENT OF AND CHANGES IN COMMON STOCK

In the event of any change in the outstanding shares of Common Stock by reason of any Common Stock dividend or split, recapitalization, merger, consolidation, spin-off, combination or exchange of shares or other corporate exchange, or any distribution to stockholders of Common Stock other than regular cash dividends, the Committee shall make a substitution or adjustment to the number or kind of shares of Common Stock or other securities issued or reserved for issuance pursuant to the Plan, and to outstanding Awards, as well as the option price or other affected terms of such Awards as in its judgment shall be necessary to preserve the Participant's rights substantially proportionate to the rights existing prior to such event.

Unless otherwise provided in an award agreement, after a merger of one or more corporations into the Company or after a consolidation of the Company and one or more corporations (a "Merger Event") in which the Company shall be the surviving or resulting corporation, an Award holder shall, where applicable, at the same cost, be entitled upon the exercise of an Award, to receive (subject to any action required by stockholders) such securities of the surviving or resulting corporation as shall be equivalent to the shares underlying such Award as nearly as practicable to the nearest whole number and class of shares of stock or other securities.

Unless otherwise provided in an award agreement, if the Company enters into any agreement with respect to any transaction which would, if consummated, result in a Merger Event in which the Company will not be the surviving corporation, the Committee in its sole discretion and without liability to any person shall determine what actions shall be taken with respect to outstanding Awards, if any, including, without limitation, the payment of a cash amount in exchange for the cancellation of an Award or the requiring of the issuance of substitute Awards that will substantially preserve the value, rights and benefits of any affected Awards previously granted hereunder as of the date of the consummation of the Merger Event.

SECTION 15 — AMENDMENT

The Committee or the Board may amend, suspend or terminate the Plan or any portion hereof at any time.

SECTION 16 — UNFUNDED STATUS OF PLAN

The Plan is intended to constitute an "unfunded" plan for long-term incentive compensation. With respect to any payments not yet made to a Participant, including any Participant optionee, by the Company, nothing herein contained shall give any Participant any rights that are greater than those of a general creditor of the Company. In its sole discretion, the Committee may authorize the creation of trusts or other arrangements to meet the obligations created under the Plan to deliver Common Stock or payments in lieu thereof or with respect to options, stock appreciation rights and other Awards under the Plan; provided, however, that the existence of such trusts or other arrangements is consistent with the unfunded status of the Plan.

SECTION 17 — EFFECTIVE DATE

This Plan shall be effective on April 5, 1995. No Awards may be granted under the Plan on or after April 30, 2006.

SECTION 18 — SECTION 409A

Notwithstanding other provisions of the Plan or any Award agreements thereunder, no Award shall be granted, deferred, accelerated, extended, paid out or modified under this Plan in a manner that would result in the imposition of an additional tax under Section 409A of the Code upon a Participant. In the event that it is reasonably determined by the Committee that, as a result of Section 409A of the Code, payments or deliveries of shares in respect of any Award under the Plan may not be made at the time contemplated by the terms of the Plan or the relevant Award agreement, as the case may be, without causing the Participant

holding such Award to be subject to taxation under Section 409A of the Code, the Company will make such payment or delivery of shares on the first day that would not result in the Participant incurring any tax liability under Section 409A of the Code. In the case of a Participant who is a "specified employee" (within the meaning of Section 409A(a)(2)(B)(i) of the Code), payments and/or deliveries of shares in respect of any Award subject to Section 409A of the Code that are linked to the date of the Participant's separation from service shall not be made prior to the date which is six (6) months after the date of such Participant's separation from service from the Company and its affiliates, determined in accordance with Section 409A of the Code and the regulations promulgated thereunder. The Company shall use commercially reasonable efforts to implement the provisions of this Section 18 in good faith; provided that neither the Company, the Committee nor any of the Company's employees, directors or representatives shall have any liability to Participants with respect to this Section 18.

EXHIBIT A

- (a) "Affiliate" shall mean any entity designated by the Committee in which the Company or an Affiliate has an interest.
- (b) "Award" shall mean any type of stock-based award granted pursuant to the Plan.
- (c) "Board" shall mean the Board of Directors of the Company; provided, however, that any action taken by a duly authorized committee of the Board within the scope of authority delegated to such committee by the Board shall be considered an action of the Board for purposes of this Plan.
- (d) "Change in Control" shall mean the occurrence during the term of the Plan of:
- a) The commencement (within the meaning of Rule 14d-2 under the Securities Exchange Act of 1934 (the "Exchange Act")) of a tender offer for more than 20% of the Company's outstanding shares of capital stock having ordinary voting power in the election of directors (the "Voting Securities");
 - b) An acquisition (other than directly from the Company) of any voting securities of the Company by any "Person" (as the term person is used for purposes of Section 13(d) or 14(d) of the Exchange Act) immediately after which such Person has "Beneficial Ownership" (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of the combined voting power of the Company's then outstanding Voting Securities; provided, however, in determining whether a Change in Control has occurred, Voting Securities which are acquired in a "Non-Control Acquisition" (as hereinafter defined) shall not constitute an acquisition which would cause a Change in Control. A "Non-Control Acquisition" shall mean an acquisition by (i) an employee benefit plan (or a trust forming a part thereof or a trustee thereof acting solely in its capacity as trustee) maintained by (A) the Company or (B) any corporation or other Person of which a majority of its voting power or its voting equity securities or equity interest is owned, directly or indirectly, by the Company (for purposes of this definition, a "Subsidiary"), (ii) the Company or its Subsidiaries, or (iii) any Person who files in connection with such acquisition a Schedule 13D which expressly disclaims any intention to seek control of the Company and does not expressly reserve the right to seek such control; provided, however, that any amendment to such statement of intent which either indicates an intention or reserves the right to seek control shall be deemed an "acquisition" of the securities of the Company reported in such filing as beneficially owned by such Person for purposes of this paragraph (b);
 - c) The individuals who, as of the effective date of the 1994 initial public trading in Company shares, are members of the Board (the "Incumbent Board"), ceasing for any reason to constitute at least a majority of the members of the Board; provided, however, that if the election, or nomination for election by the Company's common stockholders, of any new director was approved by a vote of at least two-thirds of the Incumbent Board, such new director shall, for purposes of this Plan, be considered as a member of the Incumbent Board; provided further, however, that no individual shall be considered a member of the Incumbent Board if such individual initially assumed office as a result of either an actual or threatened "Election Contest" (as described in Rule 14a-11 promulgated under the Exchange Act or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board (a "Proxy Contest") including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest;
 - d) Approval by stockholders of the Company of:
 - (i) A merger, consolidation or reorganization involving the Company, unless such merger, consolidation or reorganization is a "Non-Control Transaction"; i.e., meets each of the requirements described in (A), (B) and (C) below:
 - (A) the stockholders of the Company, immediately before such merger, consolidation or reorganization, own, directly or indirectly, immediately following such merger, consolidation or reorganization, at least the Applicable Minimum Percentage (as defined below) of the combined

voting power of the outstanding voting securities of the corporation resulting from such merger or consolidation or reorganization (the "Surviving Corporation") in substantially the same proportion as their ownership of the Voting Securities immediately before such merger, consolidation or reorganization;

(B) the individuals who were members of the Incumbent Board immediately prior to the execution of the agreement providing for such merger, consolidation or reorganization constitute at least the Applicable Minimum Proportion (as defined below) of the members of the board of directors of the Surviving Corporation immediately following the consummation of such merger, consolidation or reorganization; and

(C) no Person other than the Company, any Subsidiary, any employee benefit plan (or any trust forming a part thereof or a trustee thereof acting solely in its capacity as trustee) maintained by the Company, the Surviving Corporation, or any Subsidiary, or any Person who, immediately prior to such merger, consolidation or reorganization had Beneficial Ownership of 20% or more of the then outstanding Voting Securities has Beneficial Ownership of 20% or more of the combined voting power of the Surviving Corporation's then outstanding voting securities immediately following the consummation of such merger, consolidation or reorganization;

(ii) A complete liquidation or dissolution of the Company; or

(iii) An agreement for the sale or other disposition of all or substantially all of the assets of the Company to any Person (other than a transfer to a Subsidiary); or

e) An event that would constitute a "Change in Control" within the meaning of Section 2(g) in the Lehman Brothers Holdings Inc. 2005 Stock Incentive Plan.

With respect to paragraph (d)(i) above, "Applicable Minimum Percentage" means (1) eighty percent (80%) with respect to Awards made prior to November 14, 2000, and (2) fifty percent (50%) with respect to Awards made on or after November 14, 2000; and "Applicable Minimum Proportion" means (1) two-thirds with respect to Awards made prior to November 14, 2000, and (2) a majority with respect to Awards made on or after November 14, 2000.

Notwithstanding the foregoing, a Change in Control shall not be deemed to occur solely because any Person (the "Subject Person") acquired Beneficial Ownership of more than the permitted amount of the outstanding Voting Securities as a result of the acquisition of Voting Securities by the Company which, by reducing the number of Voting Securities outstanding, increases the proportional number of shares Beneficially Owned by the Subject Persons, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of Voting Securities by the Company, and thereafter such Beneficial Owner acquires any additional Voting Securities which increases the percentage of the then outstanding Voting Securities Beneficially Owned by the Subject Person, then a Change in Control shall occur.

(e) "Code" shall mean the Internal Revenue Code of 1986, as from time to time amended.

(f) "Committee" shall mean the Compensation and Benefits Committee of the Company.

(g) "Common Stock" shall mean the common stock of the Company, \$.10 par value.

(h) "Company" shall mean Lehman Brothers Holdings Inc. and, except as otherwise specified in this Plan in a particular context, any successor thereto, whether by merger, consolidation, purchase of substantially all its assets or otherwise.

(i) "Fair Market Value" on any date means the closing price of the shares on such date on the principal national securities exchange on which such shares are listed or admitted to trading (or, if such

exchange is not open on such date, the immediately preceding date on which such exchange is open), the arithmetic mean of the per share closing bid price and per share closing asked price on such date as quoted on the National Association of Securities Dealers Automated Quotation System, or such other market in which such prices are regularly quoted, or, if there have been no published bid or asked quotations with respect to such shares on such date, the Fair Market Value shall be the value established by the Committee in good faith and, in the case of an incentive stock option, in accordance with Section 422 of the Code.

(j) "Other Stock-based Award" shall mean any of those Awards described in Section 8 hereof.

(k) "Participant" shall mean an employee, officer, director or consultant of the Company.

(l) "Subsidiary" shall mean any corporation which at the time qualifies as a subsidiary of the Company under the definition of "subsidiary corporation" in Section 424(f) of the Code, as amended from time to time.

Exhibit F

19 Marshall Court
Great Neck, New York 11021
March 29, 2013

Honorable James M. Peck
One Bowling Green
New York, New York 10004
Courtroom 601

Mr. Robert J. Lemons, Esq.
Mr. Mark Bernstein, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153

Re: Participation in RSU Claims Discovery in Connection with Omnibus Objections to Reclassify Proofs of Claim as Equity Interest: Karen M. Simon Krieger – Claim Number: 18087 in the amount of \$164,319.52

Dear Sirs:

As a United States employee of Lehman Brothers from November, 1990 through September, 2008, I filed Claim 18087 in response to the 2008 bankruptcy. Upon receiving a copy of the Objection to Claims submitted by Weil, Gotshal & Manges LLP which references my claim in its Appendix, I formally objected to its merits to convert my entire claim to an Equity Interest. I requested that the motion be denied in its entirety.

In response to the Discovery process as requested by Weil, Gotshal & Manges, enclosed are my supporting documents and response upholding why the Restricted Stock Units (RSU) claims must be considered compensation and are, in fact, liabilities of Lehman Brothers that are owed to me for services rendered.

My claim consists of \$164,319.52 in Lehman Brothers RSUs, \$45,320.36 in Lehman Brothers Common Stock and \$15,756.67 in 401K investment in Lehman Brothers Common Stock.

- The portion of the claim held in RSUs (\$164,319.52) was a mandatory annual deduction from compensation that was required to be held by Lehman Brothers for a period of five years before vesting. Upon the five year vesting, this would have been converted to common stock at the current market rate. This portion never vested nor did it convert to Lehman Brothers Common Stock as it was still less than the five year period at the time of the Lehman Brothers bankruptcy. As this was not a discretionary deduction and was part of my income, the \$164,319.52 should be considered as lost compensation.
- The portion of the claim held in Lehman Brothers Common Stock (\$45,320.36) was the portion of the Lehman Brothers RSUs that had vested and was converted to Common Stock at the end of 2007.
- The portion of the claim held in Lehman Brothers Common Stock (\$15,756.67) was the portion of my 401K that I chose to invest in Lehman Brothers Common Stock.

The evidence is overwhelming; the deferred and ultimately unpaid compensation which was converted to unvested RSUs is a Lehman Brothers liability that is owed to me and must be paid to me to settle the claim. On every dimension, employee-employer, enterprise – investing public-at-large, and the enterprise – regulators, Lehman Brothers, in its own documents, recorded and communicated its obligation to pay for services rendered.

With regard to the RSUs, there is overwhelming evidence that Lehman Brothers consistently communicated to its employees via

- Lehman Brothers Stock Award Program Material,
- Lehman Brothers Offer Letters,
- Lehman Brothers Intranet Site (Equity Award Program Equity Award issuance),
- Lehman Brothers Compensation Statements,
- Lehman Brothers Memorandums on the Stock Award Program,
- Lehman Brothers Annual Reports,
- Lehman Brothers Form 10K Reports, and
- Lehman Brothers RSU Bonus Pay Stubs

that the RSUs were a component of an employee's compensation with appropriate ordinary income tax treatment. Additionally, RSUs were not treated in accordance with the terms laid out in the program's supporting documentation when an involuntary termination without cause or a hostile change in control occurs.

From the point of entry into the Firm to its declaration of bankruptcy, Lehman Brothers communicated to not only me, but to every employee, its investors, the rating agencies and even the federal government that the stock award program (RSU program) was compensation and implemented via compensation deductions.

Lehman Brothers' management made a decision in 1994, shortly after it became a publicly traded Firm, to establish a stock award program that provides every member of Lehman Brothers with an ownership interest in the Firm and a requirement that the stock be held for five years. As noted in their annual stock award distribution to its employees, the program provides an incentive to think and act like an owner every day, and allows all participants to share in the Firm's financial success over time.

It has been repeatedly communicated to the employees that the RSUs were funded through a mandatory deduction of a portion of our annual compensation and therefore should be treated as if it is lost compensation and a priority, secured claim. Further supporting this is the notion that I was neither in any position to make a choice regarding my desire to become a participant nor could I make any investment decisions during the restricted period. Choices to hold or sell the RSUs were only available after the completion of the vesting period.

Going through my third, very public employer bankruptcy is just unconscionable. Every effort was made by me to learn from the lessons of the first and second bankruptcies at Drexel Burnham Lambert and Sentinel Government Securities respectively and minimize my investment in an organization where I had a dependency on for my annual earnings stream. In light of my previous employers' history and my personal circumstances, I needed to sell most of my RSUs each year upon their vesting in order to pay for the raising of my children through their college education and graduation.

While I most certainly thought and acted like an owner during my eighteen years at Lehman Brother every day, the management decision to establish this program handcuffed my ability to manage my RSU investments as I have managed my other investments. I was dependent upon decisions outside of my control.

My objection is associated to the RSUs where I had no ability to make prudent investment decisions. I have excluded those shares that I have kept beyond the restricted period where I had the discretionary ability to make personal investment decisions.

In summary, I am asking the court to rule that the portion of my claim associated to the unvested RSUs (\$164,319.52) be treated as if it is lost compensation and a priority, secured claim.

Discovery Documentation Upholding RSUs as Compensation

Lehman Brothers communicated to each employee at time of offer to join as an employee that the RSU program was a component of compensation. Exhibit KK-03, a Lehman Brothers Offer Letter, as noted below, provides the verbiage that clearly classifies the RSUs as a portion of an employee's current and future compensation pursuant to the Firm's employee stock award program.

... At the Firm's option, a portion of your 2000 and future years' total compensation (combined base salary, bonus, and other compensation) will be payable in RSUs pursuant to the Firm's employee stock award program as then in effect.

It is important to note that this compensation would be withheld for a period of five years. It was not an issuance of stock but retention of cash, to facilitate a balance sheet maneuver required to impress the rating agencies, the investment community, and the regulators. Whether the holding vehicle for the withheld compensation is held in cash, certificates of deposit, treasury bonds, an index basket of investments, or a Firm-managed vehicle it should be viewed as irrelevant as underlying this maneuver is the employee's deferred compensation.

In the years immediately following Lehman Brothers going public, (1994 – 2001), Lehman Brothers issued detailed hard copy documents explaining the Employee Stock Award Program. Subsequently, in the more recent years, these documents were made available on Lehman Live, the Firm's Intranet portal. In accordance with Exhibit KK-01 and KK-02, as noted below, the Lehman Brothers Employee Stock Award Program provides the underlying details associated to how the overall program works, that the shares are awarded as a portion of compensation, how the shares are converted to common stock after the five year vesting period, the appropriate ordinary income tax treatment at vesting and thereafter and how unvested shares should be handled in the event of an involuntary termination without cause. To date, the unvested shares have not been handled in accordance with the terms of involuntary termination without cause as stated in how the program is supposed to work. It is important to note that the tax treatment appears to have been implicitly approved by the IRS. Additionally, the federal government must have considered and approved the five year withholding period of compensation through RSU vesting and conversion from deferred compensation to Lehman Brothers stock as a non-capital gains event from investment activities. For reference, in accordance with Exhibit KK-01 Lehman Brothers Stock Award Program, on page 2 it states,

All bonus eligible members of the Firm receive a portion of their compensation in restricted stock units (RSUs). Each RSU represents the right to receive one share of Lehman Brothers common stock five years after the RSU is granted. The RSUs have been awarded to you as part of your 1994 bonus payable for the year's performance. The portion of compensation paid in RSUs increases as the amount of your total compensation rises.

For reference and in accordance with Exhibit KK-01, Page 9 summarizes the tax treatment and what will be required and ultimately due under current tax law:

- At the time the RSUs are awarded, there is no taxable event.

- When your RSUs vest, you will owe FICA tax on their value. The value of the RSUs subject to the FICA tax will be the number of units vesting multiplied by the price of Lehman Brothers common stock on the date the units vest.
- After the restriction period for 1994 RSUs ends, on July 1, 1999, your RSUs convert to common stock. Ordinary income equal to the July 1, 1999 market value of your shares will be reported to the IRS and you will be subject to tax withholding on this amount. Since the receipt of these shares is treated as compensation paid to you, ordinary income tax rates apply, rather than the special provisions dealing with capital gains.
- On July 1, 1999, when your RSUs convert to common stock, your cost basis for tax purposes will equal the market value of your shares that day. Any subsequent increases in value will be taxed as capital gains when the stock is sold. If the stock price is lower when you sell than it was when the RSUs converted, you will have a capital loss to declare.

Annually, the communications from Lehman Brothers continued to uphold how the program would work and its ongoing compliance with the IRS tax regulations. For reference and in accordance with **Exhibit KK-02**, the 2001 Lehman Brother Stock Award Program, Page 2 of the 2001 Stock Award Program at a Glance states:

- All eligible members of the Firm receive a portion of their compensation in restricted stock units (RSUs). Each RSU represents the right to receive one share of Lehman Brothers common stock five years after the RSU is granted.
- RSUs have been awarded to you as part of your 2001 compensation payable for the year's performance. The amount of compensation paid in RSUs increases as the amount of your total compensation rises.
- In 2001, a portion of your stock award was priced in September and the balance of your award was priced in December. Generally, the Firm's stock award is made only at one time in the year, at year end.
- A portion of your RSU award was priced at \$34.98, based on the closing price of Lehman Brothers common stock on September 20, 2001 (\$46.64), less a 25 percent discount. The balance of your 2001 RSUs was priced at \$47.55 based on the closing price of Lehman Brothers common stock on December 3, 2001 (\$63.40), discounted by 25 percent.
- On November 30, 2006 the restriction period will end, and you will be entitled to receive one share of Lehman Brothers common stock for each vested RSU you hold. Once your RSUs convert to common stock, they become freely tradable. The RSUs cannot be sold, transferred or pledged before conversion.

Additionally, Page 12 provides transparency into the Tax Treatment of RSUs and states:

Under current tax regulations, you will not be taxed on the value of your RSUs until they convert to common stock. As a result, your RSUs appreciate on a pre-tax basis for the five-year restriction period. (For members of the Firm whose employment status changes, special provisions apply. Please see the following section.)

Provided below is a summary of the U.S. taxes that are ultimately due under current tax law:

- At the time the RSUs are awarded, there is no taxable event.
- After the restriction period for 2001 RSUs ends, on November 30, 2006, your RSUs, including any additional RSUs that you receive through dividend reinvestment, convert to common stock. Ordinary income equal to the November 30, 2006 market value of your shares will be reported to the IRS, and you will be subject to tax withholding on this amount. Since the receipt of these shares is treated as compensation paid to you, ordinary income tax rate apply, rather than the special provisions dealing with capital gains.

- On November 30, 2006, when your 2001 RSUs convert to common stock, your cost basis for tax purposes will equal the market value of your shares on that day. Any subsequent increases in value will be taxed as capital gains when the stock is sold. If the stock price is lower when you sell your shares than it was when the RSUs converted, you will have a capital loss to declare.

Furthermore Page 14 of Exhibit KK-02 as noted below provides the steps to be taken by Lehman Brothers in the case of an Involuntary Termination without Cause. At bankruptcy, our employment with Lehman Brothers was terminated and we either became employed by Barclays Capital, Nomura Securities or lost our jobs. In accordance with these below mentioned steps, Lehman Brothers did not follow the procedures subsequent to the bankruptcy which would have required them to issue the common stock and enable us to make investment decisions at the then prevailing market price.

- If you are terminated involuntarily but without cause, you will be entitled to receive the entire principal portion (75 percent) of your 2001 RSUs and a pro-rata portion of the discount (25 percent of the award). The portion of the discount you receive will be prorated in 20 percent increments for every full year of service with the Firm after November 30, 2001. So, if your termination occurs prior to November 30, 2002, you will not be entitled to receive any of the RSUs related to the discount portion. However, if termination occurs after a "Full Career" with the Firm, you will be entitled to receive the entire discount portion of your RSU award. "Full Career" termination means you have at least 20 years of service or your age and length of service equals at least 65, plus your age is at least 45 and you have at least ten years of service with Lehman Brothers. Shares of Lehman Brothers common stock will be issued to you, without restrictions, at the earlier of a) November 30, 2006 (five years after the award date) or b) the end of the fiscal quarter one year following your termination date, provided you do not engage in Detrimental Activity through that date.

Furthermore, according to the terms of the 2001 Lehman Brothers Stock Award Plan Exhibit KK-02, on page 15, Section: Change in Control ("CIC") Provisions:

Hostile:

- All RSU's vest immediately
- Shares of Lehman Brothers common stock will be issued immediately so you may tender your shares with other shareholders

Clearly, the acquisition of Lehman Brothers by Barclays Capital and Nomura Securities meets the condition of that clause. Lehman Brothers chose not to distribute my vested RSU's to my Firm-approved account at A.R. Schmeidler, as prescribed by its own documents. I was unable to sell [at a loss] into the marketplace in 2008, 2009, 2010, 2011, or 2012. Now, after years of legal maneuvering, Lehman Brothers' shares are no longer trading.

As evidenced in Exhibit KK- 04, Lehman ensured that there was program and personal award transparency on Lehman Live, the Firm's Intranet Site Page on the Equity Award Program and how the conditional equity awards are a portion of total compensation and how shares associated to involuntary terminations should be handled as noted below. To date, the unvested shares have not been handled in accordance with the terms of involuntary termination without cause as stated in how the program is supposed to work.

In support of Lehman Brothers program transparency, Exhibit KK – 04 Equity Award Program – Lehman Live states:

Equity Award Components - Employees receive a portion of their total compensation in the form of conditional equity awards. The form of equity award depends on the work location, as follows:

<u>Location</u>	<u>Equity Award Type</u>
United States	Restricted Stock Units ("RSUs")

RSU Termination Provisions: 2006 – 2007 Equity Award Program - 2006 – 2007 RSU Termination Provisions for All Employees - Involuntary Termination: Participants will become entitled to 100% of both the RSU Principal and Discount on the Share Payment Date, provided they do not engage in Detrimental Activity through that date. RSUs will convert to shares of common stock and be issued on the Share Payment Date.

As further evidenced in Exhibit KK-04, Lehman Brothers provided personal award transparency on Lehman Live, the Firm's intranet portal. The amounts withheld from compensation are identified as Grant Value. The holding vehicle is defined as Units and not Lehman Brothers common stock. The total sum of monies withheld is identified as \$159,244. Additionally the statement shows additional dividend equivalents accrued to each of my units granted. The dividend equivalents are then multiplied by the initial grant price and added to the withheld dollars to total \$164, 319.52 which is owed to me for services performed during my tenure at Lehman Brothers. Attached is a print out of my personal statement with data as of August 31, 2008.

Annually, Lehman Brothers went through a well-coordinated, structured set of sessions to manage compensation expense. As a manager I attended training sessions organized by the Human Resources department to learn and practice the script for that year end compensation conversation with my staff. The overall message associated to the RSU program was that compensation was withheld in order to ensure we felt like owners and personally had skin in the game. In addition to these sessions, we were given talking points for every scenario possible, in order to diffuse a potential employee dispute to their year-end compensation distribution. Exhibit KK-23 provides a sample of the Manager Communications Sheets which are labeled 2007 Total Compensation Statement. The payment schedule itemizes the bonus plus any awards less the bonus amount that will be withheld for the RSU plan and ultimately the net total cash payment before taxes.

With the investment community, the message to the public was construed in order to generate a favorable impression of solid relations with its employees. In those meetings, it was often touted how supportive employees were of the Lehman Brothers' mission. It was reputed that ~33% of The Lehman Brothers was owned by employees, one of the highest for financial firms. The strategy was quite sophisticated with both internal and external perception well managed by communications experts sprinkled in the Human Relations department (for internal employee issues), the Marketing Department (for the public), and the Finance Department (for the investment community.) With the latter, financial engineering was implemented throughout all levels of Lehman Brothers, in order to meet the quarterly analyst estimates.

My compensation statements that were provided to me by my manager provided me with the transparency as an employee. Exhibits KK-05, KK-06, KK-07, as noted below on the Lehman Brothers Total Compensation Statements, provide the employee with an understanding of the components of their compensation which include paid salary and bonus which is made up of RSUs and Net Bonus After RSUs.

Exhibit KK -- 05 Lehman Brothers 2003 Total Compensation Statement, **Exhibit KK -- 06** Lehman Brothers 2004 Total Compensation Statement and **Exhibit KK -- 07** Lehman Brothers 2005 Total Compensation Statement each were distributed each year and provided the breakdown of the Total Compensation as Paid Salary and Bonus which sums to each employee's Total Compensation. Further detail shows the Bonus as a Gross Bonus minus the Compensation associated to the RSUs and then the Net Bonus after RSUs and Before Taxes.

Additionally, my Lehman Brothers Pay Stubs for Bonuses paid from 2003 -- 2007, **Exhibits KK-18, through KK-22**, reflect full year compensation as comprised of earnings, annual bonus and bonus associated to the RSU component. **Exhibit KK -- 18** 2003 RSU Bonus Pay Stub- Pay stub for 2003 Bonus reflects Bonus 2003, 2003 RSU Bonus and Regular Salary as Earnings. **Exhibit KK -- 19** 2004 RSU Bonus Pay Stub -Pay stub for 2004 Bonus reflects Bonus 2004, 2004 RSU Bonus and Regular Salary as Earnings. **Exhibit KK -- 20** 2005 RSU Bonus Pay Stub- Pay stub for 2005 Bonus reflects Bonus 2005, 2005 RSU Bonus and Regular Salary as Earnings. **Exhibit KK -- 21** 2006 RSU Bonus Pay Stub- Pay stub for 2006 Bonus reflects Bonus 2006, 2006 RSU Bonus and Regular Salary as Earnings. **Exhibit KK -- 22** 2007 RSU Bonus Pay Stub- Pay stub for 2007 Bonus reflects Bonus 2007, 2007 RSU Bonus and Regular Salary as Earnings.

A firm wide memorandum was distributed to all participants of the stock award program as referenced in **Exhibit KK-08** that provide the employee with an understanding of the how the taxes associated to the vested shares will be handled, reiterating that they are in line with ordinary income and included on our W2 in line with IRS tax regulations.

Exhibit KK- 08 Memorandum -- Participants of the 2002 Stock Award Program

On November 30, 2007, the RSUs you received under the Lehman Brothers Stock Award Program converted to shares of Lehman Brothers common stock. At that time, the market value of your shares was recognized as income subject to tax withholding. This income was based on the closing price of Lehman Brothers stock (\$62.63) on November 30, 2007.

You elected to tender shares to cover the tax withholding obligation related to the issuance of your 2002 RSUs. Please note that the income related to the issuance of your shares and your tax withholding obligation will be included in your 2007 Form W2. Additionally, the payment of your tax withholding obligation has been remitted to the IRS on your behalf.

Further detailing the tax treatment is **Exhibit KK-09**, as noted below, from Lehman Live, the Firm's Intranet Site Page on the November 2007 Equity Award Issuance represents the treatment of the RSU shares that were granted under the 2002 Lehman Brothers Equity Award Program and provides the employee with an understanding of the how the taxes associated to the vested shares will be handled, in line with ordinary income tax treatment.

Cost Basis - The market value of the issued shares will be reported as employment income as of November 30, 2007. This price represents your cost basis. Any subsequent increase in value of you shares may be treated as capital gains when the stock is sold. If your sale price is lower than the closing price on November 30, 2007, you may have a capital loss declare, if applicable. Your holding period for capital gains/losses begins November 30, 2007.

Ordinary Income (Shares x Cost Basis) - Shares issued multiplied by the closing price of LEH at time of issuance.

Required Tax Withholding Obligation - The tax withholding obligation represents the minimum amount Lehman Brothers is required to withhold as follows:

Federal Tax Liability, State Tax Liability, Local Tax Liability, Social Security, Medicare, SDI/SUI, Non -US Tax Liability
= Tax Withholding Obligation

Total Taxes Paid - Represents the closing pricing of LEH multiplied by the number of shares withheld to cover taxes....

Shares Withheld to Cover Taxes - The number of shares withheld to cover your tax obligation was based on the closing price of Lehman Brothers common stock on November 30, 2007. Lehman brothers withheld taxes based on the minimum required withholding rates. You may have further tax reporting and/or payment obligation with respect to this income. (For participants subject to U.S. taxes, you will receive a Form 1099B for the 2007 tax year which reflects the value of the shares tendered to Lehman brothers to cover your taxes.) Your tax basis for these shares is based on the closing price of Lehman Brothers common stock on November 30, 2007 (\$62.63). There is no gain or loss on the shares tendered to Lehman Brothers for taxes.

November 2007 Equity Award Issuance - Taxes Due - At this time the RSUs/CSAs were awarded, there was no taxable event. After the restriction period ends on November 30, 2007, your RSUs/CSAs will convert to freely tradable shares of Lehman Brothers common stock. The market value of your shares on November 30, 2007, will be recognized as employment income, on which tax will be payable at the prevailing income tax rates.

The finesse with which Lehman Brothers handled compensation expense is further evidenced in the financial statements, audited by Ernst & Young LLP, the Independent Registered Public Accounting Firm, from 2000 -- 2007. Excerpts from each year's financial statements are submitted as **Exhibits KK-10 through KK-16** and the Lehman Brothers 10K-as **Exhibit KK-17**. As part of its marketing pitch as a "Best Operator," Lehman Brothers engineered the Compensation and Benefits/Net Revenues ratio to stay within a 49% - 50%, to please the rating agencies and investment community.

Table 1. 0 Compensation Ratio

(Data Extracts in Millions)	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
INCOME STATEMENT										
Total Revenues	\$19,694	\$18,089	\$26,447	\$23,392	\$28,761	\$17,287	\$21,290	\$32,420	\$46,709	\$59,063
Net Revenues	\$4,113	\$5,340	\$7,707	\$6,758	\$8,153	\$8,647	\$11,576	\$14,690	\$17,588	\$19,257
Compensation & Benefits/Net Revenues	51%	51%	51%	51%	51%	50%	49%	49%	48%	48%

Source: Lehman Brothers Annual Reports, 2000-2006 and 2007 10-K

The details are outlined in Notes, along with the Statements themselves. From 2000 to 2005, in the Consolidated Statement of Cash Flows, the amortization of deferred stock compensation appears in the Cash Flows from Operating Activities. This, explicitly, states by the auditors that it is not from a financing or investing activity. Further in the Notes section for Employee Incentive Plans, the language reads, "Eligible employees receive RSU's as a portion of their total compensation in lieu of cash."

These documents were not confidential nor were they employee eyes-only documents. They were prepared by financial professionals for external consumption by the investing public, regulators, and the rating agencies. It is explicit, conceptually, operationally, and financially, that the employees are owed monies for their services and the payment of that liability will be smoothed out over a five year timeframe, the vesting period. This is not some complicated option pricing mechanism. It is very clear that Lehman Brothers acknowledged that it owed employees those monies and the holding period could be used to incent people internally, while meeting the external results required by investors, suppliers and regulators, during volatile financial market cycles.

From my analysis, if Lehman Brothers were to pay a 100% cash bonus, it would never have been able to achieve a praised, though architected, Compensation and Benefits/Net Revenues ratio.

Table 2.0 Compensation Ratio (Revised)

(Data Extracts in Millions)	1998	1999	2000	2001	2002	2003	2004	2005	2006
INCOME STATEMENT									
Compensation and Benefits	\$2,086	\$2,707	\$3,981	\$8,437	\$3,139	\$4,318	\$5,730	\$7,219	\$8,669
Amortization of Deferred Stock Compensation (CFQ)	-\$223	-\$383	-\$520	-\$544	-\$570	-\$625	-\$800	-\$1,055	-\$1,706
Deferred Stock Awards Granted	\$417	\$593	\$1,003	\$624	\$407	\$699	\$1,282	\$1,574	\$892
Total Compensation Expense (TCE)	\$2,280	\$2,917	\$4,464	\$8,517	\$3,071	\$4,312	\$6,212	\$7,738	\$7,855
TCE/Net Revenues	55%	54%	80%	43%	72%	41%	26%	32%	35%

Source: Lehman Brothers Annual Reports, 2000-2006 and 2007 10-K

Why is this accounting detail even necessary information? The Statement of Consolidated Cash Flows clearly outlined that the monies used to pay dividends to shareholders and for investing activities, such as the purchase of property, equipment and leasehold improvements (Assets) were funded from two sources: (1) monies withheld from employees and (2) the IRS-approved tax benefit for doing so. Essentially, Lehman Brothers acted as an escrow agent, permitted to use the withheld funds for its own purposes for a period of 5 years, which included the ability to book assets (short-termed and long-lived) on the balance sheet.

In 2006, there was concern in the financial community that firms, not just Lehman Brothers, were not properly accounting for employee services, when compensation was deferred. The Financial Accounting Standards Board (FASB) completed a revision of FASB Statement No. 123 to address "transactions in which an entity incurs liabilities in exchange for goods or services that are based on the fair value of the entity's equity instruments or that may be settled by the issuance of those equity instruments. "

This Statement focused "primarily on accounting for transactions in which an entity obtains employee services in share-based payment transactions." This was to address "concerns by requiring an entity to recognize the cost of employee services received in share-based payment transactions, thereby reflecting the economic consequences of those transactions in the financial statements." Conceptually, the cost of employee service "will be recognized over the period during which an employee is required to provide service in exchange for the award—the requisite service period (usually the vesting period). ... "A public entity will initially measure the cost of employee services received in exchange for an award of liability instruments based on its current fair value; the fair value of that award will be remeasured subsequently at each reporting date through the settlement date. Changes in fair value during the requisite service period will be recognized as compensation cost over that period."

In non-accounting speak, this was an acknowledgment that management of many firms, including Lehman Brothers, had been smoothing income statement results, in order to reduce variability and convey "good news," also known as better than the analysts' estimates. Although somewhat old, the Ball and Brown Study, "An Empirical Evaluation of Accounting Income Numbers," in the Journal of Accounting Research (Autumn 1968) demonstrated "clear (empirical) association between earnings and stock market reaction....firms whose earnings conveyed good news enjoyed abnormally better stock returns." (White, Sondhi, Fried, The Analysis and Use of Financial Statements, 1994, p. 297).

Since financial statements are an important part of functioning financial markets, FASB's revision, and Lehman Brothers' adoption in 2006, was to make very clear "Employee services received in exchange for awards of share-based compensation qualify as assets, though only momentarily—as the entity receives and uses them—although their use may create or add value to other assets of the entity. This Statement will improve the accounting for an entity's assets resulting from receipt of employee services in exchange for an equity award by requiring that the cost of such assets either be charged to expense when consumed or capitalized as part of another asset of the entity (as permitted by U.S. GAAP)."

As any finance professional knows, FASB is the "designated organization in the private sector for establishing standards of financial accounting that govern the preparation of financial reports by nongovernmental entities. Its standards are officially recognized as authoritative by the Securities and Exchange Commission (SEC) (Financial Reporting Release No. 1, Section 101, and reaffirmed in its April 2003 Policy Statement) and the American Institute of Certified Public Accountants (Rule 203, Rules of Professional Conduct, as amended May 1973 and May 1979)." (<http://www.fasb.org/isp/FASB/Page/SectionPage&cid=1176154526495>)

FASB was well aware of the research efforts in academia, along with the actual practice of buying employee services now and pay later. It was very clear that FASB understood, also, the ramifications of non-transparent financial statements. As Sondhi, White and Fried explain, "a monitoring device is needed to ensure that the agreements or contracts between managers – shareholders-creditors are adhered to. ...a firm [is not] an independent entity but rather a 'nexus of contracts' (explicit or implicit) between parties, each motivated by their own self-interest. The role of accounting in this scenario is to provide the monitoring device enabling the contracting process to function." (SWF, p. 314).

If the industry accounting standards board, Lehman Brothers' accountants, and Lehman Brothers 10-K (Exhibit KK – 17) filing to the SEC, a U.S. government governing entity, acknowledge that my provision of labor is a compensation expense, then it seems pretty clear that there is an unpaid obligation that need to be settled. Even Lehman Brothers' own paperwork demonstrates that fact. It seems curious as to why Lehman Brothers no longer wants to reimburse me, for services rendered from 2003 through 2008. If there is a question about the quality of my labor, as an effort to dismiss my claim, it seems a bit late. As a high performer I always represented Lehman Brothers' interests to the best of my ability, both internally and externally.

While I expect Lehman Brothers to contest the existence of any contract, I submit the following:

- Offer and acceptance (I received an offer letter from Lehman Brothers and accepted employment – Lehman Brothers left me; I never left Lehman Brothers.)
- Competent persons (I was rated highly throughout my term of employment. Lehman Brothers was experienced with over 150 years in business.)

- Consideration (The bargain was an exchange: I deliver top quality advice, expertise, and management capabilities for the Technology Division and Lehman Brothers pays me Compensation.)
- Sufficiency (Up until its bankruptcy, Lehman Brothers paid me and I delivered an excellent work product.)

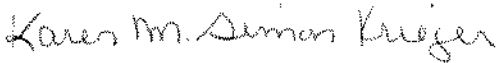
In my opinion, it is ironic that key to Lehman Brothers' success was its moral fiber to do the right thing and to work honorably. As this case and claims process has dragged on, often for Lehman Brothers' and its attorneys' financial benefit, it seems that the once-proud firm has lost its anchor. Lehman Brothers and its leaders made an exorbitant amount of money, yet the employees who built the technology, negotiated its deals, ran the operations and day-in, day-out delivered excellence, often to the neglect of their own personal lives, are being forced to take financial losses, because it is no longer convenient for Lehman Brothers to honor its obligations to the suppliers of the intellectual capital that built it and its assets which continue to generate revenue for the estate and pay the associated legal fees.

As I see it, Lehman Brothers chose to not only ignore the years of documentation, but also to use its portfolio of resources, built by the sweat of a very loyal workforce, against the very same people, whose intellectual capital created it. The delay tactics, the legal methodology forced on weary employees, already traumatized, along with re-employment of senior executives, as hired guns to continue to build the case and not testify against Lehman Brothers demonstrates the capacity and willingness to ignore its legal commitment to its former employees.

I submit that that every piece of evidence contributes to the fact that a contract existed between Lehman Brothers and me and with it comes an outstanding balance that is owed to me. Based on the documents provided, it is quite clear that as an employee, there is a contract for payment. Since it is now almost 10 years since the initial delivery of work product, Lehman Brothers should pay me the outstanding balance and what is rightfully owed to me. Every document submission has demonstrated that my compensation has been withheld. It is time for Lehman Brothers and its attorneys to read its own documents and to do the right thing.

I ask the court to order payment of my claim in full, in the amount of \$164,319.52.

Thank you,



Karen M. Simon Krieger
kmskrieger@gmail.com
cell - 917-545-7481

[All FASB quotes are from its Summary of Statement No. 123 (revised 2004) located at:
<http://www.fasb.org/summary/stsum123r.shtml>]

EXHIBIT B

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 CASE NO. 08-13555-scc

4 - - - - - x

5 In the Matter of:

6

7 LEHMAN BROTHERS HOLDINGS, INC.,
8 ET AL,

9

10 Debtors.

11 - - - - - x

12

13 U.S. Bankruptcy Court
14 One Bowling Green
15 New York, New York

16

17 April 2, 2014

18 10:04 AM

19

20 B E F O R E :

21 HON. SHELLY C. CHAPMAN

22 U.S. BANKRUPTCY JUDGE

23

24

25 ECRO - F. FERGUSON

1 HEARING Re Evidentiary Hearing on RSU Claims

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25

1 P R O C E E D I N G S

2 (DISCLAIMER: Poor audio; attorneys away from microphones;
3 attorneys and witness on same microphone; shuffling of
4 papers, etc. noted as "indiscernible")

5 THE COURT: All right. So we are back in session,
6 and as we had discussed yesterday, pursuant to the agreement
7 of the parties and the stipulation and order establishing
8 procedures for this hearing, today is the day that we have
9 set aside to hear from pro se parties.

10 So I think the first thing that I'd like to do is
11 to determine who's here and who would like to be heard.

12 Please come up. Good morning.

13 MR. SHOTTON: Good morning.

14 MS. JAO: Good morning, Your Honor.

15 THE COURT: All right, so there are only two here
16 as far as we can tell, two of you? Do you have an
17 understanding if anybody else is going to be coming later
18 today?

19 MR. SHOTTON: I'm not aware of anybody else, no.

20 THE COURT: Okay. Well then why don't -- yes,
21 Ms. Solomon?

22 MS. SOLOMON: Your Honor, I just wanted to remind
23 the Court that I would be speaking on behalf of a pro se
24 upon their completion.

25 THE COURT: Okay, that's fine. All right.

1 Okay, so then why don't we -- why don't we start
2 with you, ma'am, and then sir, you'll have your chance next.

3 All right, what is your name, please.

4 MS. JAO: Good morning, Your Honor, my name is
5 Andrea Jao.

6 THE COURT: Okay.

7 MS. JAO: I'm a pro se claimant who started as a
8 junior analyst with equity research in 2000, and had
9 opportunity to take a more responsibility and stayed through
10 the bankruptcy in 2008.

11 THE COURT: Okay. Ms. Jao, before -- before you
12 keep going I just want to clarify procedurally that I view
13 your statement as -- I mean I'm anticipating that it will be
14 some combination of an argument and also some factual
15 matters. Fair summary or fair guess?

16 MS. JAO: Yeah.

17 THE COURT: Okay. So to the extent that you are
18 testifying and telling me things that you want me to find as
19 a fact then I'm going to treat what you're saying as
20 testimony and I'm going to treat it as having been made
21 under oath.

22 MS. JAO: Yes, Your Honor.

23 THE COURT: Although I won't formally administer
24 the oath. Okay?

25 MS. JAO: Yes, Your Honor.

1 THE COURT: All right, go ahead.

2 MS. JAO: Thank you. Well first of all thank you
3 for the chance to --

4 THE COURT: Absolutely.

5 MS. JAO: -- to speak. I will apologize ahead of
6 time as I will not be able to use the same language with
7 precision and as articulate --

8 THE COURT: Okay. I will look -- I will look
9 forward --

10 MS. JAO: -- as counsel.

11 THE COURT: -- to hearing whatever you have to say
12 however you say it.

13 MS. JAO: Okay.

14 So in 2009 I received proof of claim forms from
15 Lehman Brothers Holdings Inc. which I filed and which I
16 submitted as instructed, because I thought it only fair that
17 I should recover unpaid compensation.

18 I would like to respectfully petition the Court to
19 recognize the RSU claims as unpaid compensation and that
20 claimants should receive -- such as myself should receive
21 these payments from Lehman Brothers Holdings.

22 I will not repeat, you know, the arguments said
23 yesterday, but I do have four points that I'd like to go
24 through briefly --

25 THE COURT: Okay.

1 MS. JAO: -- which I think actually address or
2 touch on some of the questions Your Honor has raised
3 repeatedly yesterday. So hopefully that's helpful.

4 THE COURT: Okay.

5 MS. JAO: So RSUs as a compensation scheme
6 entailed a lot of complications as well -- entailed a lot of
7 complications, and one of the points brought up yesterday
8 was that RSUs make employees act as owners or shareholders,
9 and as you yourself has mentioned, you take advantage of
10 appreciation and depreciation of the stock price.

11 I think though that we should think more deeply as
12 to what this means. It really begs the question, did
13 holders of RSUs really have the ability to act as owners and
14 shareholders? And for the four following reasons I would
15 argue that holders of RSUs, vested or unvested, did not have
16 the full ability to act as owners and shareholders.

17 Point number one. One of the hallmarks of
18 ownership in a company is the ability to have an impact on
19 its policies such as what types of business to engage in,
20 how much risk to take, how much leverage to put on the
21 balance sheet, how much dividends to pay, to raise or not to
22 raise capital, or to draw down a cash reserve or to lengthen
23 debt maturities.

24 Why did I enumerate these things? Because these
25 were the important decisions management was making and had

1 implemented in the months leading up to the bankruptcy.

2 And, you know, the former senior management of
3 Lehman Brothers had ongoing conversations and conference
4 calls with institutional shareholders during which
5 institutional investors could express their opinions
6 regarding these policies.

7 In addition, institutional investors could signal
8 their favor or disfavor to senior management through
9 financial markets such as through the stock price or through
10 credit default swap spreads.

11 Holders of RSUs, such as myself, would typically
12 hear about these strategies or implementation of strategies
13 the same time it came out in the public domain, the same
14 time it hit the news wires. Holders of RSUs, such as
15 myself, did not participate in any of these -- of the
16 markets that, you know, full institutional shareholders
17 participated in. Senior management and the board of
18 directors were the ones who crafted and made decisions for
19 Lehman brothers, not you know, rank and file employees.

20 Point number two. Another hallmark of ownership
21 in a publicly traded company is the ability to use liquid
22 markets to express an opinion. Typically both institutional
23 and retail equity investors make a specific choice to buy
24 shares of stock and can easily do so given liquid cash
25 equity markets. Once they own the stock their choices are

1 to hold or to sell, which again they can do easily.

2 The typical equity shareholder thus faces three
3 choices; buy, hold, or sell. If equity investors carry
4 residual risk and can be wiped out it is important that they
5 have the ability to exercise all three choices first along
6 as their investors.

7 Holders of RSUs did not have these choices. RSUs
8 have neither buy or sell choices. All an employee can do is
9 hold. And this goes to an important point -- or question
10 you raised yesterday about participate -- RSU holders
11 participating in appreciation and depreciation of the stock
12 price.

13 Again, your typical equity shareholder
14 institutional investor at any point in time can realize
15 gains or losses. At any time. And therefore making
16 participation in -- in appreciation or depreciation of stock
17 price real.

18 THE COURT: Can I ask you a question?

19 MS. JAO: Yes, ma'am.

20 THE COURT: Do you think that it was illegal for
21 Lehman to have paid employees with restricted stock units?
22 Was it against the law?

23 MS. JAO: That's a -- depends on what else is in
24 that question, how much did you know about?

25 THE COURT: No, I'm not really asking the question

1 about --

2 MS. JAO: Okay. So --

3 THE COURT: -- how'd you know about it, I mean --

4 MS. JAO: -- in general? No.

5 THE COURT: -- Lehman -- so they -- I mean it's a
6 -- it's an instrument --

7 MS. JAO: Uh-huh.

8 THE COURT: -- they determine what characteristics
9 --

10 MS. JAO: Uh-huh.

11 THE COURT: -- it would have. They told you that
12 you were getting this as part --

13 MS. JAO: Uh-huh.

14 THE COURT: -- of your compensation, right?

15 MS. JAO: Yeah.

16 THE COURT: They gave you documents that described
17 it, and all day yesterday the only thing that I heard about
18 what you weren't told --

19 MS. JAO: Uh-huh.

20 THE COURT: -- was that there at one point was
21 something that said in the event of a bankruptcy you're
22 subordinated and that was taken out.

23 So the only thing that I've heard about a non-
24 disclosure --

25 MS. JAO: Uh-huh.

1 THE COURT: -- was that.

2 MS. JAO: I have points three and four --

3 THE COURT: Okay.

4 MS. JAO: -- regarding that.

5 THE COURT: Okay, go ahead.

6 MS. JAO: If I may.

7 THE COURT: Go ahead.

8 MS. JAO: Okay. So -- so definitely I'll come
9 back to that.

10 THE COURT: Okay.

11 MS. JAO: But in the meantime regarding point two.

12 So RSU shareholders while hypothetically saw the values of
13 RSUs rise and fall with the stock price, unlike true
14 shareholders there's no way to realize the benefit or loss,
15 and I think that's a big difference, because it's also
16 related to -- for an RSU holder to vote with their feet, so
17 they already don't have the ability to realize the gain or
18 loss so long as it's an RSU, you know, before it converts.
19 But to vote with our feet is very costly because they would
20 be walking away from unpaid wages, and that's how I view,
21 you know, RSUs, unpaid wages for which labor is already
22 rendered.

23 RSUs are often described as a retention device by
24 employers and holders of RSUs do not have the full capacity
25 to vote with their feet. Yes, there is a choice

1 hypothetically, but I don't know if the right term is
2 punitive, it's a very -- it's very --

3 THE COURT: It's a hard choice, right?

4 MS. JAO: It's a very -- it's an extreme choice,
5 and --

6 THE COURT: But it is a choice.

7 MS. JAO: Yes.

8 THE COURT: It just has a cost, right?

9 MS. JAO: A very high cost.

10 So it's my humble opinion that -- and I'm no
11 expert in labor law -- but it's in my humble opinion that
12 labor law should protect employees from having to walk away
13 from compensation for which they already rendered labor. I
14 mean, you know, it's -- but that's just my opinion.

15 THE COURT: No, I understand that, and what I'm --
16 what I'm struggling with is that when you have a situation
17 and going in to the situation each year, the first year that
18 you start, before it becomes costly --

19 MS. JAO: Uh-huh.

20 THE COURT: -- in other words before you have the
21 sunk cost --

22 MS. JAO: Right.

23 THE COURT: -- of I've gotten this and now in
24 order to realize the value of it I have to wait. At that
25 threshold moment there's a choice. There's a choice of

1 whether to accept this employment in which you're being told
2 that you're going to get a salary --

3 MS. JAO: Uh-huh.

4 THE COURT: -- and a bonus, and that part of it
5 will be paid in this other form of currency, this non-cash
6 currency.

7 MS. JAO: Right.

8 THE COURT: And at that moment you have a choice.
9 You -- this is not indentured servitude --

10 MS. JAO: Uh-huh.

11 THE COURT: -- it's not slavery, you can say no
12 thank you, Lehman Brothers, I don't want to work for you --

13 MS. JAO: Uh-huh.

14 THE COURT: -- I'm going go work for Credit Suisse
15 or Goldman Sachs or Citibank where they pay all in cash.
16 You have -- you have that choice.

17 MS. JAO: Understood, Your Honor, but let's go
18 into a bit more detail about that decision.

19 Let's say I'm standing here January 1 making the
20 decision whether to continue working or not given the
21 current compensation structure. So that (indiscernible -
22 00:12:17) by point three.

23 Shareholders and institutional investors know up
24 front before they make an investment, before they make a
25 decision how much their investment would be. Lehman

1 employees were only told that a portion of their
2 compensation would be RSUs at the end of the year. At the
3 start of the year we were not told -- we were not told, you
4 know, 50 percent or 10 percent.

5 THE COURT: Right, and you --

6 MS. JAO: We weren't told.

7 THE COURT: You weren't told, but you -- you then
8 at that moment in time had a choice that you understood that
9 there was going to be a number, and the assortment of forms
10 of compensation was in their determination, and at that
11 point in time early on you could say I can't live with that
12 uncertainty --

13 MS. JAO: But how do you --

14 THE COURT: -- I'm not going to work here. Go
15 ahead.

16 MS. JAO: I understand what you're saying, Your
17 Honor, but how could you make a good enough decision at the
18 start of the year whether the cash flow you'll get would
19 be --

20 THE COURT: Well you knew the cash flow that you
21 were going to get -- I mean the ones that I saw yesterday
22 there was a -- the number I kept seeing was 200,000 --

23 MS. JAO: Uh-huh.

24 THE COURT: -- that was the example.

25 MS. JAO: Yeah.

1 THE COURT: So if you're getting \$200,000 a year
2 that means roughly speaking you're taking home, you know,
3 based on what -- how my taxes work -- you're taking home
4 about \$10,000 a month.

5 MS. JAO: Uh-huh.

6 THE COURT: And then the rest of it is to be
7 determined. And you -- on some of the compensation
8 statements that I saw at the end of the year you got a lump
9 sum of additional cash and you got some stock.

10 MS. JAO: Right.

11 THE COURT: And that's what -- that -- that's
12 exactly what they told you -- Lehman told you up front was
13 going to happen. What -- what it sounded like from some of
14 the papers was that people were saying after the fact Lehman
15 took away some of that 200,000. So --

16 MS. JAO: No, you weren't given the exact
17 proportion until after you render labor.

18 THE COURT: That's right, but you were told up
19 front at the firm's option we're going to pay some of this
20 compensation in -- we may pay some of this compensation in
21 this other form.

22 So going into at the first moment in time you had
23 the choice of saying, I don't like that, I want to know
24 exactly what I'm going to be paid and in what form and I'm
25 not going to work here.

1 You -- when you go to work at any
2 -- at any firm like this before you agree to walk through
3 the door and sit down at a desk and give your labor, that's
4 the bargain, right?

5 MS. JAO: Right.

6 THE COURT: That's the bargain. You could say,
7 this is not for me, this is not for me, I'm going to -- so
8 I'm going to go to bank across the street because at bank
9 across the street they pay all in cash.

10 I suspect, although I don't know, that there was
11 an opportunity to earn a bigger number, a higher number of
12 more compensation at Lehman partially because some of it was
13 payable in stock. So there's a choice, right? I could go
14 to bank across the street where they're promising to pay me
15 \$400,000 in cash --

16 MS. JAO: Uh-huh.

17 THE COURT: -- or I can work at Lehman and get
18 \$200,000 in cash and have a chance to get this black box of
19 compensation more. That's my only point.

20 MS. JAO: No, I see your point, Your Honor, and
21 how you could take the -- that as a take away from
22 yesterday's discussions. My experience has been a little
23 different.

24 THE COURT: Okay.

25 MS. JAO: It's not in my prepared statement, but

1 you know, I joined Lehman as a junior --

2 THE COURT: Okay.

3 MS. JAO: -- as part of a bigger team which was
4 taken out -- which was lifted out actually from Citigroup.

5 THE COURT: Okay. What year was that?

6 MS. JAO: 2000.

7 THE COURT: Okay.

8 MS. JAO: July of 2000. So, you know,
9 negotiations were hurried, you weren't actually -- so you
10 were -- so in the contract you were told part of your
11 compensation is going to be in RSUs, what the hell are
12 those? Well don't worry, the senior guys are getting them,
13 you know, it's the same thing.

14 So I see what you're saying --

15 THE COURT: Uh-huh.

16 MS. JAO: -- my experience has just been a little
17 different. I wish I was better informed, I wish I was less
18 naive then, but --

19 THE COURT: Well, you know, one thing that's --
20 you know, that is striking, I mean I think you make a good
21 point that the senior guys were getting them, right?

22 MS. JAO: Right.

23 THE COURT: So probably a lot of the senior guys
24 had very, very, very substantial numbers of RSUs --

25 MS. JAO: Yes.

1 THE COURT: -- that --

2 MS. JAO: Certainly my -- my RSUs made claims are
3 I -- I'm pretty sure are but a fraction of what you were
4 hearing yesterday, so why would --

5 THE COURT: I don't know about that, but I will
6 say, so if you began at Lehman in 2000 --

7 MS. JAO: Uh-huh.

8 THE COURT: -- then you were able to convert the
9 RSUs that you had between -- that you earned between 2000
10 and 2000 and --

11 MS. JAO: Three?

12 THE COURT: -- three, right?

13 MS. JAO: Yeah, very -- it was a very small
14 amount. You know, it was a token amount.

15 THE COURT: Okay. And then it rose as you became
16 more senior?

17 MS. JAO: No, the stock converted --

18 THE COURT: Uh-huh.

19 MS. JAO: -- so the stock itself was a very token
20 amount, and the RSUs, eventually you know, increased
21 incrementally --

22 THE COURT: Right.

23 MS. JAO: -- I was still not -- you know, I never
24 made managing director so it wasn't --

25 THE COURT: Uh-huh.

1 MS. JAO: But I'm still here because for me it's a
2 matter of principal.

3 THE COURT: I absolutely --

4 MS. JAO: Right?

5 THE COURT: -- I absolutely understand and I --
6 you're being extremely articulate and I appreciate it.

7 So I've interrupted you, so why don't I let you
8 keep going.

9 MS. JAO: Yeah.

10 THE COURT: You said you had --

11 MS. JAO: Yeah.

12 THE COURT: -- some additional points.

13 MS. JAO: Yeah. Yes.

14 While the RSUs -- while the use of RSUs with
15 described as compensation mechanism their use by Lehman
16 Brothers allowed the company to defer expenses, which
17 complicated employer/employee relationship.

18 At Lehman we were given our compensation
19 statements at the end of the year based on how well we did
20 in the preceding 12 months. We received cash compensation
21 soon after.

22 With Lehman recognizing this expense during the
23 course of the year, the cash compensation Lehman recognized
24 over the 12 months; however, Lehman recognized the expenses
25 associated to RSUs only over the next three or five years

1 and benefited from the failure of expenses even if services
2 were rendered in the preceding 12 month, and they received
3 full benefit of my services in the preceding 12 months.

4 This accounting practice gave Lehman the incentive
5 to use compensation mechanisms that was not necessarily
6 transparent, fair, or in the best interest of their rank and
7 file employees working for the company whose emphasis was,
8 you know, to make a livelihood.

9 So to wrap up, and as I mentioned earlier, part to
10 the reason, you know, I'm making an effort to participate in
11 this process, is really a matter of fairness.

12 You know, so an outsider looking in it's very easy
13 to view the proceedings as it's procedural, you know, it's
14 very structured, but I've also come to understand that the
15 law does not exist in a vacuum and so I'd like to wrap up by
16 mentioning fairness.

17 Like other claimants who were rank and file
18 employees of Lehman Brothers my relationship with the
19 company is a way to earn a livelihood. While I'm not a
20 lawyer and not as well informed I do understand that workers
21 are afforded certain protections under the law; however,
22 through the bankruptcy process we've been relegated to the
23 end of the line.

24 Institutional investors, as well as their legal
25 counsel, have already received significant amounts on an

1 ongoing basis. On the other hand employees are still
2 struggling to get through the proceedings with far less
3 resources and no how to do so.

4 The best way I can describe the experience is that
5 it's been a matter of attrition. I think others have
6 dropped their claims not because they agree that the RSUs
7 are equity interest, but because the requirements have
8 become too demanding, too confusing, and they've been
9 discouraged because of that.

10 Last but not least, and this related to fairness.
11 Yesterday you mentioned a passage from the RSU agreement
12 that states RSUs does not -- you know, RSU holders do not
13 have the rights of shareholders, and if I understood the
14 discussions correctly --

15 THE COURT: Uh-huh.

16 MS. JAO: -- that was described as a boilerplate
17 statement and should be disregarded.

18 While I'd like to think that, you know, I have
19 some ability to comprehend the documents, but there was no
20 way I could have made the distinction that this part of the
21 documents should be disregarded and this part should not be.
22 I mean how would --

23 THE COURT: Yeah, I think that -- I think that
24 there was a little confusion around that part. That
25 particular legend said that you don't have the rights of a

1 shareholder until it converts to common stock.

2 MS. JAO: Yes.

3 THE COURT: And that was meant to convey exactly
4 your point that you started the day with, which was that
5 you couldn't vote, right? You yourself as the holder of an
6 RSU were not going to get a proxy statement as you would,
7 but there were -- there were -- there were voting rights
8 that were attached to the RSUs --

9 MS. JAO: Yeah.

10 THE COURT: -- because of those interests being
11 put into a trust and having that trustee vote.

12 What I was arguing I believe with Ms. Solomon
13 about on that point was that -- the point was being made
14 that because it says you don't have the rights of a
15 shareholder that means that you must have been being told
16 you had the rights of a general creditor.

17 So in the -- let me explain a little -- let me
18 explain bankruptcy world, right? So when you have a
19 bankruptcy estate the law is that the assets get distributed
20 in a --

21 MS. JAO: Right.

22 THE COURT: -- in an order --

23 MS. JAO: Yes.

24 THE COURT: -- you know, in a -- and there's a
25 very elaborate priority scheme.

1 MS. JAO: Yes.

2 THE COURT: Right? So that for that purpose we
3 have to -- a debtor -- a reorganized debtor or a trust has
4 to divide the world into each of those interests, and I
5 think what was being argued yesterday was you see, the
6 holders of the RSUs were told that they don't have the
7 rights of a shareholder and therefore that means that in
8 this bankruptcy they have the rights of creditors and be --
9 get to be ahead of the line. And what I was saying was,
10 that's not a fair reading of that statement, because as you
11 said, context is everything.

12 So the context of that statement was clarifying
13 exactly your point was that you don't get to vote, you don't
14 get to demand -- make a demand on the board to bring a
15 particular action which would give rise to the right to
16 bring a shareholder suit.

17 So you're absolutely right, you -- the RSUs were
18 not equivalent in terms of all of the rights that they have
19 to a share of stock. You are right, I agree with you.

20 MS. JAO: When -- thank you, Your Honor.

21 THE COURT: Okay.

22 MS. JAO: When I started at Lehman --

23 THE COURT: Uh-huh.

24 MS. JAO: -- as a junior I worked 80 hundred (sic)
25 hour weeks and weekends, so even if these documents were

1 available, you know, your priorities were a little different
2 or else you're -- you know, you're out there, but even if I
3 did read the documents I swear I would have never understood
4 them in this way. But that -- you know, that's okay --

5 THE COURT: No --

6 MS. JAO: -- that's water under the bridge.

7 THE COURT: -- I understand.

8 But I also want to respond to what you said about
9 kind of the war of attrition that you feel --

10 MS. JAO: Uh-huh.

11 THE COURT: -- has taken place here, because the
12 case -- we're now -- it's now 2014 and of course I took over
13 from Judge Peck in January, and I think this matter first
14 came up before him a couple of years ago and then there's
15 this elaborate procedure.

16 When the estate gets administered -- and I know
17 it's hard to accept this -- but it's the duty of those who
18 administer it to follow the law and make sure that every
19 claim falls in the right bucket and that folks who under the
20 law are supposed to be at the back of the line and in this
21 case not receive anything, don't jump up. Because if you
22 imagine a very large RSU claim that gets turned into a cash
23 claim that then reduces the recovery of the people -- of the
24 creditors who are above that class.

25 MS. JAO: Uh-huh.

1 THE COURT: So it's a very important exercise
2 mandated by law to do this, and I know that it doesn't seem
3 fair, and I'm, you know, greatly sympathetic, I was an
4 associate at a law firm for many, many years and when you
5 get hired, you know, you get told you have a salary and a
6 bonus, and I remember thinking, well, what does that mean a
7 bonus? Is that real, do I really get that, do I not get
8 that?

9 So -- and as you said, you know, I wouldn't have
10 really kind of like knocked on the managing partner's door
11 and said what does that really mean because you're -- you
12 know, you're starting out and you want to succeed and you go
13 along.

14 So I understand where you're coming from is the
15 easiest way for me to say it, and I just want to convey to
16 you that I'm -- will do everything -- I am obligated to
17 follow the law and do everything that I can to come to the
18 right result.

19 MS. JAO: Your Honor, I do appreciate the value of
20 the procedure and the bankruptcy laws in this country,
21 because during the last financial crisis you could see
22 recovery encompassed here --

23 THE COURT: Right.

24 MS. JAO: -- more quickly with less destruction of
25 value because we do have the benefit of the bankruptcy laws

1 and Bankruptcy Court. I do appreciate that.

2 My only question is, and maybe this isn't the
3 right venue for it, but where do labor protections fall?

4 THE COURT: Well, I think -- I mean, you know, we
5 could spend a day --

6 MS. JAO: Right.

7 THE COURT: -- we could spend a day talking about
8 it. I think that, you know, it's the classic bind that
9 labor is in because of the nature of the relationship.

10 If all of the analysts in 2002 had said to Lehman,
11 you know, we're -- we don't know what this really means, we
12 don't like this deal, we're going walk with our feet maybe
13 Lehman would have changed it or maybe Lehman would have said
14 walk with your feet.

15 But, you know, at a certain point, you know, you
16 -- in the absence of circumstances, which frankly so far I
17 don't believe are present here, I don't think there's really
18 a remedy under -- under the labor law.

19 I mean I think that bankruptcy is a -- is a
20 shocking event for people. No one could have foreseen -- no
21 one could have foreseen the fall of Lehman Brothers. No one
22 could have foreseen it. Hopefully it'll never happen again,
23 and a lot of innocent folks lost a lot of -- lost a lot of
24 money, but any way.

25 MS. JAO: Thank you, Your Honor.

1 THE COURT: Thank you very much, I very much
2 appreciate your taking the time to come down.

3 MS. JAO: Thank you.

4 THE COURT: Thank you, Ms. Jao.

5 Sir? Did I hear someone ring in on the line?

6 I'm sorry, Mr. Miller, did you want to ask Ms. Jao
7 some questions?

8 MR. MILLER: Ralph Miller for LBHI.

9 No, Your Honor. I just wanted to state that we
10 have no questions --

11 THE COURT: Okay, thank you.

12 MR. MILLER: -- or cross-examination for the
13 record.

14 THE COURT: Thank you.

15 Is there somebody who dialed in on the telephone
16 line?

17 Okay, yes, sir. What is your name, please.

18 MR. SHOTTON: My name is Paul Shotton.

19 THE COURT: How do you spell your last name?

20 MR. SHOTTON: S-H-O-T-T-O-N.

21 THE COURT: Okay, thank you, Mr. Shotton.

22 The same rules apply with respect to you. I
23 assume that largely what you're going to say is in the
24 nature of argument, but to the extent that you are
25 indicating facts relating to your personal circumstances and

1 situation with Lehman I will view that as sworn testimony --

2 MR. SHOTTON: Indeed.

3 THE COURT: -- that you're giving under oath.

4 Okay, go ahead.

5 MR. SHOTTON: So my name is Paul Shotton. I was
6 hired by Lehman's brothers on May the 24th of 2004 by the
7 chief risk officer of the firm, Madelyn Antoncic, who I knew
8 slightly from relationships at earlier firms that we'd both
9 worked at, and I was hired as a managing director to be the
10 global head of marketing risk management.

11 Now when I was hired it was clear that that job
12 was always going to be in New York where all of the senior
13 management, certainly in the corporation functions or the
14 risk management functions were all based in New York. But I
15 was born in the United Kingdom and I was working in the
16 United Kingdom up until the time when I was hired.

17 So knowing that it would take some time to get a
18 visa for the U.S. immigration authorities to give me a visa
19 to move to the states I began working in London on May the
20 24th, and my visa finally -- or came through in August of
21 2004, I moved by family to the United States in August 2004,
22 I've been here every since.

23 So I continued with Lehman until the bankruptcy,
24 and then initially I was transferred to Barclays Capital,
25 but on October the 20th of 2008, I, along with most of the

1 other senior members of risk management, that were laid out
2 of my Barclays Capital.

3 Shortly afterwards in 2009 I received at my home
4 address in Connecticut, through one of the mail delivery
5 services, I received a proof of claim form which was already
6 largely populated, it was populated with my name and
7 address, it was populated with the name of the creditor
8 Lehman Brothers Holdings Inc., and the notice of scheduled
9 claims said that it was a Schedule G, executory contract or
10 unexpired lease, the description being restricted stock unit
11 agreements. So I completed that form and sent it in.

12 I later had cause to need to change some of the
13 figures on my form, and the form that I subsequently sent in
14 I actually had to make two amendments, and they were blank
15 forms, so I filled those in myself, but I simply copied all
16 of the information in terms of the -- in terms of the
17 creditors being LBHI.

18 I put into the court record my hiring letter that
19 I had from Lehman Brothers. I've actually put it into the
20 record twice. The first time on February the 13th of 2012
21 in response to an earlier attempt by Lehman to have my claim
22 reclassified as equity, and I put it into the record again
23 on March the 4th of this year because I couldn't be sure --
24 having put it in so long ago originally I couldn't be sure
25 that it would be -- it would be fresh in mind. So that's an

1 employment letter, gives me a guarantee for the performance
2 year 2004.

3 So fiscal -- Lehman's fiscal performance year is
4 identical to their fiscal year, ends on November the 30th of
5 each year.

6 THE COURT: Okay. Let me ask you to pause for a
7 minute. Is Mr. Shotton's letter in the -- in the record
8 somewhere?

9 MR. SHOTTON: I have some copies I can --

10 THE COURT: Do you have an extra copy?
11 Ms. Alvarez, do you have a copy?

12 MS. ALVAREZ: No.

13 THE COURT: And, sir, you believe you filed this
14 on the docket?

15 MR. SHOTTON: I'm sorry?

16 THE COURT: You filed this on the docket of this
17 court you think?

18 MR. SHOTTON: I -- yes, I actually addressed one
19 to your good self on March the 4th of this year --

20 THE COURT: Okay.

21 MR. SHOTTON: -- and I had already sent one to
22 Judge Peck and to other parties in --

23 THE COURT: Ms. Solomon?

24 MS. SOLOMON: Yes, Your Honor, it's Claimant 69 in
25 the attached joint appendix.

1 (Pause)

2 THE COURT: So at the joint appendix CL0069 is
3 Mr. Shotton's declaration, and attached to that is a proof
4 of claim, and attached to that is -- is the hiring letter.

5 MR. SHOTTON: Indeed.

6 THE COURT: Okay. Very good. Thank you.

7 MR. SHOTTON: So you'll see in the second
8 paragraph -- as I was explaining the performance here is
9 equal to the fiscal year, which ended on November the 30th
10 each year.

11 So you'll see for the performance year 2004 my --
12 the year which I was hired -- I was going to be paid a
13 salary at annualized rate of \$200,000, and that was I think
14 the maximum salary with any MD in the firm was paid --
15 managing director of the firm was paid. And a guaranteed
16 minimum bonus of \$1.55 million payable on or about January
17 the 31st in the following year.

18 And at the bottom of the letter, the one, two --
19 the fourth paragraph says:

20 "At the firm's discretion a portion of this 2004
21 and future years compensation will be payable in conditional
22 equity awards pursuant to the firm's stock award program
23 then in effect."

24 And then the next paragraph begins:

25 "Your compensation for all periods after

1 performance of year 2004 will be determined at the firm's
2 discretion; however, referencing a run rate compensation
3 level for that of 2004 of one and three quarter million
4 dollars."

5 So my point here is that this guarantee for the
6 first year and the run rate which was referenced for future
7 years compensation was guaranteed in U.S. dollars, the legal
8 tender of this country. That wasn't guaranteed in terms of
9 a number of hours used, the number of Lehman shares, the
10 number of share options or CSAs or anything else, it was
11 U.S. dollars. And so I understood that to being that they
12 were -- that was the -- my -- my guarantee.

13 And I understood RSUs -- I mean many Wall Street
14 firms, most firms have similar compensation deferral
15 programs and part of that deferred compensation is paid in
16 the form of equity.

17 There were two things that were unusual about a
18 Lehman scheme in relation to other firms. One was the
19 amount of compensation, which was paid in the form of
20 deferred equity. So as other firms typically might have
21 been 15 to 25 percent of total compensation was deferred at
22 Lehman between -- well for the first year 33 percent of my
23 bonus was deferred in the form of RSUs, later it became 40
24 percent of the bonus, which were very high figures.

25 The other unusual future was the long length of

1 the deferral period. So other firms, the lady spoke
2 yesterday about Barclays, my own experience at JPMorgan
3 before was that deferrals were in -- of three years -- three
4 equal transfers, paid a third, a third, a third after the
5 end of the subsequent three years, and as soon as equity
6 vested it was immediately yours free to dispose of as you
7 wished.

8 So this cliff vesting after five years was an
9 unusual feature of Lehman's terms. And ostensibly as sort
10 of compensation for that that was why the stock was offered
11 at a discount. That was another rare -- by that point
12 unusual feature. Most firms had -- no longer granted their
13 equity at a discount, Lehman was one of the few that did,
14 and they finally got rid of that clause in 2008.

15 So Lehman might say, well, okay, you -- you
16 accepted this letter, perhaps initially you (indiscernible -
17 00:38:20) you didn't do enough due diligence to really
18 understand exactly what the terms of the deferral were, I
19 had assumed it was going to be similar to those other
20 typical Wall Street firms like JPMorgan, but after the first
21 year once you had experienced the first years compensation
22 that should have been clear to you, why did you continue to
23 stay? And de facto by continuing to stay for another three
24 and a half years after the first year you had accepted the
25 terms and conditions. If you didn't like them then you

1 could have --

2 THE COURT: Well, can I --

3 MR. SHOTTON: -- you could have walked.

4 THE COURT: -- can I just -- can I just stop you,
5 because it's a striking letter, and I'm quite glad that
6 you're here, because the situation that you describe, which
7 is making an enormous decision to move your family to the
8 United States.

9 MR. SHOTTON: Exactly.

10 THE COURT: An enormous decision, okay? And you
11 get a letter -- and I'm trying to read this through your
12 eyes, right? You get a letter that says, "At the firm's
13 discretion ..." no question what those words mean. "At the
14 firm's discretion ..."

15 MR. SHOTTON: Absolutely.

16 THE COURT: "A portion of your total 2004 and
17 future years total compensation ...," and then there's a
18 parenthetical that draws down on that, "combined base
19 salary, bonus, and other compensation will be payable in
20 conditional equity awards."

21 So through my eyes if I'm reading this I say,
22 whoa, not only are they telling me that they can pay part of
23 my bonus in equity, but they're telling me that they might
24 actually be able to pay my base salary in equity.

25 I mean that to me just plain English reading would

1 set off enormous bells and -- alarm bells because it would
2 signal to me that I have no -- there's no backstop here,
3 there's nothing here -- there's no firm guarantee -- cash
4 number that's guaranteed.

5 So -- so -- and your case is also extremely
6 interesting because obviously the title, the position, you
7 weren't being hired as somebody, you know, to work in some
8 low level department, I mean you fantastically sophisticated
9 individual.

10 So I'm just trying to harmonize what you're
11 telling me with, you know, your having gotten this letter --

12 MR. SHOTTON: Uh-huh.

13 THE COURT: -- and made a decision to come over
14 here.

15 MR. SHOTTON: A literal interpretation of their
16 words may well indicate that even the salary was potentially
17 -- could potentially being withheld in the form of RSUs.

18 THE COURT: Be in play, right?

19 MR. SHOTTON: But that was not the practice at
20 all. Remember that it was common practice on Wall Street to
21 withhold some portion of compensation and to be deferred
22 either deferred cash or deferred equity, so that wasn't
23 unusual to me.

24 Also remember that my hiring manager, Madelyn
25 Antoncic, I knew -- I didn't know her extremely well, but I

1 knew her somewhat --

2 THE COURT: Uh-huh.

3 MR. SHOTTON: -- we both worked as Golden Sachs in
4 the past, we both shared a short period -- short experience
5 at BSW, myself in London always and she in New York, so I
6 didn't know her well --

7 THE COURT: Uh-huh.

8 MR. SHOTTON: -- but I knew her reasonably well
9 and I knew standard Wall Street practices, and so to me it
10 wasn't unusual.

11 THE COURT: Uh-huh.

12 MR. SHOTTON: I took a certain amount on trust of
13 course, and I have to say that the first year, 2004, only 33
14 percent of the bonus was withheld in the form of RSUs, and
15 my understanding is that that had been the typical -- the
16 typical kind of percentage --

17 THE COURT: Uh-huh.

18 MR. SHOTTON: -- withholding for up until that
19 period. It was only after that that it was increased to 40
20 percent.

21 THE COURT: So that means in the first year then
22 and it's pro rata it's not a full year, but so 33 percent --
23 I'm sorry -- was the -- does that one million five represent
24 the pro rata?

25 MR. SHOTTON: 1. -- no, 1.55 was the guaranteed

1 bonus for the -- for the whole year, whatever I worked of
2 it.

3 THE COURT: For calendar -- for calendar of 2004.

4 MR. SHOTTON: For -- well, for fiscal year, for
5 performance year 2004.

6 THE COURT: Performance year. So --

7 MR. SHOTTON: 1.55 million.

8 THE COURT: So eventually --

9 MS. JAO: The thing that was pro rata was the
10 salary, because I joined May the 24th --

11 THE COURT: Yeah, yeah.

12 MR. SHOTTON: -- I worked for just over six months
13 so I got just over \$100,000 of salary --

14 THE COURT: Okay. And then how much --

15 MR. SHOTTON: -- but the 1.55 was guaranteed.

16 THE COURT: -- how much -- how much cash did you
17 get on January 31, 2005? So it would have been a third
18 of --

19 MR. SHOTTON: The --

20 THE COURT: -- of a half of a million five?

21 MR. SHOTTON: Of the 1.55 million bonus RSUs
22 amounted to 509,952 and the cash payment before taxes was
23 \$1,040,048.

24 THE COURT: So even though you only worked a half
25 a year that number is the -- is the actual number that is

1 your bonus for the year 2004?

2 MR. SHOTTON: That's correct. That's correct.

3 Because --

4 THE COURT: Was part of that like a signing bonus?

5 MR. SHOTTON: Effectively because in leaving
6 JPMorgan, my previous employer, I was leaving behind a bonus
7 on the table there.

8 THE COURT: Okay.

9 MR. SHOTTON: So this was again standard Wall
10 Street practice at the time.

11 THE COURT: Okay. So all in the cash that you
12 received on account of the work that you did in 2004 was
13 approximately a million one.

14 MR. SHOTTON: Yes.

15 THE COURT: Okay. Okay, go ahead, I interrupted
16 you.

17 MR. SHOTTON: Okay. So -- so Lehman might say,
18 well, after the first year at least by then your eyes were
19 opened, you were well aware of how much and to what extent
20 Lehman could defer compensation in the form of these RSUs,
21 so why didn't you just walk? You had the option to go
22 somewhere else.

23 Now from a -- in principal that's correct, but I
24 had -- if you think about it any major Wall Street firm, any
25 major trading firm, capital markets firm needs only one

1 global head of market risk management, so how many firms are
2 there? Well we're talking about five Wall Street firms.
3 Golden Sachs, Merrill Lynch, Morgan Stanley, Lehman
4 Brothers, and (indiscernible - 00:44:23). Then there are --
5 there were the two large (indiscernible - 00:44:26) banks,
6 JPMorgan and Citibank, that was it. Bank of America once it
7 acquired Merrill wasn't a major capital markets player, so
8 seven names in the United States, one of which I was already
9 at Lehman.

10 In Europe you had two large Swiss banks, UBS and
11 Credit Suisse, and Deutsche Bank in Germany, and that was
12 pretty much it. Barclays wasn't a major player, it wasn't a
13 first league player until after they brought Lehman's out of
14 bankruptcy -- North American business out of bankruptcy in
15 2008. So there were about nine firms that I could have gone
16 to.

17 So my skill set is highly technical, highly
18 quantitative, quite rare, and therefore compensated, it's
19 also the case there's a fairly limited demand for somebody
20 with my skill set. I had already waited -- I had been at
21 JPMorgan for seven years before moving to Lehman, I'd waited
22 for a considerable part of that period to make the next step
23 in my career progression, which at JPMorgan I was the
24 European -- Europe, Africa, Middle East head of marketing
25 risk. So the next step in the progression was global head

1 of market risk, and then I saw, you know, chief
2 (indiscernible - 00:45:28) after that. So I really had to
3 wait a long time to find the Lehman opportunity.

4 And out of leaving that behind, leaving --
5 obviously over the -- over the course of the four and a half
6 years my compensation at Lehmans accumulated to, you know,
7 four and a half million dollars or so of RSU -- RSUs left on
8 the table, I would have to walk away from that.

9 The chances of finding another equivalent job as
10 head of market risk somewhere else pretty small.

11 The chances that I could persuade another firm to
12 pay out the compensation that I was leaving on the table at
13 Lehman was -- you know, was slim to none.

14 So whilst theoretically it's correct to say I had
15 the option to walk, as a practical matter I didn't really
16 have an option to walk, and that's why I stayed at the firm.

17 And as far as my understanding of RSUs, Lehman in
18 its documentation they like to conflate the idea of RSUs
19 with equity in order to encourage employees to act like
20 shareholders, and they would used terms like equity awards
21 in relation to RSUs and CSAs and so on. But let's not let
22 that confuse us. RSUs are RSUs. They are not equity at
23 all.

24 The very basic -- if you think back for the
25 foundation of joint stock corporations they started because

1 wealthy investors wanted to invest in businesses and
2 ventures, but then at some point those circumstances
3 changed, they needed liquidity or they wanted to invest at a
4 better opportunity somewhere else and so they -- they needed
5 some means of getting out of their -- of their investment,
6 and so, you know, as history tells it they gathered under a
7 buttonwood tree not too far from here and developed the idea
8 of exchanging stocks, and that was the origin of the joint
9 stock corporation and that's the origin of equity.

10 A fundamental element of equity is that it is
11 transferable. RSUs are not sellable. I couldn't sell them,
12 I couldn't hedge them, I couldn't do anything with them.

13 As far as I was concerned there was simply nothing
14 more than a promise that in five years time they would
15 convert into equity, and until that time all I had was a
16 promise from Lehman and nothing more, and that's why I
17 regard them not as equity, not as equivalent of equity at
18 all, they're simply promises -- unfulfilled promises and
19 that's why I regard them as being equivalent to debt claims
20 not as -- not as equity claims.

21 THE COURT: Okay.

22 MR. SHOTTON: There is, if you allow me --

23 THE COURT: Yes, go ahead.

24 MR. SHOTTON: -- there's one more matter that I'd
25 like to bring to the Court's attention.

1 So on December the 21st, 2011 your distinguished
2 predecessor Judge James Peck invited a number of employee
3 claimants to make statements about their --

4 THE COURT: Right.

5 MR. SHOTTON: -- their situation, those
6 circumstances were in front of the Court. I was there on
7 that day, I was privileged to be allowed to address the
8 Court. And whereas Lehman had been saying, oh, these --
9 these employee claims they're all the same, they're all just
10 equity, they should all be reclassified as equity.

11 Judge Peck, having heard the people speak said,
12 no, that's not right. He heard people talk about -- so
13 salaried employees, not myself -- speak of RSUs. He heard
14 people in the UK and elsewhere speak of CSAs, which are
15 economically similar but legally distinct. He heard talk of
16 equity options, which are very different from RSUs and CSAs,
17 both economically and legally. He heard about commissioned
18 sales people part of whose sales commissions were being
19 withheld. And he heard about the Neuberger Berman partners
20 whose partnership stakes were swapped for RSUs.

21 THE COURT: Right.

22 MR. SHOTTON: and he said this -- there's a lot of
23 different cases here, different classes, they're not all the
24 same, and he asked the employees claimants be categorized
25 into these classes.

1 THE COURT: Right.

2 MR. SHOTTON: Now realizing full well that it
3 would be almost impossible for the employees to organize
4 themselves into these classes, because after all we didn't
5 really know one another, and it also at that point it wasn't
6 clear just how many different classes there were, he charged
7 Lehman with the responsibility of defining the classes and
8 grouping the employee claimants into these classes in order
9 to ease the process for the Court to make it more efficient
10 and at the same time that would make it more efficient for
11 the employees as well. So that each class of employees
12 could have one law firm representing them, that would avoid
13 potential conflicts of interest between different classes of
14 employees being -- their interests being represented by the
15 same law firm, and that would most importantly ease the --
16 the situation for the Court, make it more efficient. And so
17 he charged Lehman with the responsibility to do that.

18 After he did that Lehman did absolutely nothing.
19 They completely ignored that instruction, and that's why
20 today you would see that there are half a dozen law firms
21 representing the represented claimants, but it's not nicely
22 lined up in the way that Judge Peck intended with one law
23 firm representing RSU holders and one law firm -- salaried
24 employees, one for CSAs, one for commission sales people,
25 one for (indiscernible - 00:50:32). It's not like that at

1 all. These law firms covering the covered employees cover
2 several different categories.

3 THE COURT: Right.

4 MR. SHOTTON: It's quite a -- quite a mixture.

5 THE COURT: It is a mixture and I'm just -- I'm
6 very interested in what you're saying, because my reading of
7 what Judge Peck observed was that his inclination at the
8 initial hearing was to rule as a matter of law that RSUs and
9 CSAs across the board had to be subordinated, but as the day
10 went on and as he listened to more and more of the
11 individuals state their concerns he felt that as a matter of
12 procedural fairness, due process --

13 MR. SHOTTON: Yes.

14 THE COURT: -- and also to insure the ability to
15 make -- for him to make the right decision, and at that
16 moment in time of course he had no inkling that he would be
17 retiring, he then said to the debtors, we're going to have
18 to figure out a way to have an evidentiary hearing to give
19 the individual employees an opportunity to get themselves --
20 distinguish them -- their cases from the cases that led to
21 the ruling in Enron. And that's a great simplification --

22 MR. SHOTTON: Uh-huh.

23 THE COURT: -- of the issues.

24 But the -- I don't think that he had -- was
25 directing, and I don't think that Weil, Gotshal would have

1 the ability to organize the claimant pool. The claimant
2 pool then had to unfortunately organize itself.

3 And what happens in a lot of cases, and I also --
4 I've -- among the many cases that I have heard I preside
5 over the Ambac case. I'm sure you're familiar with --

6 MR. SHOTTON: Uh-huh.

7 THE COURT: -- what Ambac is. Ambac is the second
8 largest municipal bond insurer in the United States and it
9 ended up in this court of course because of the defaults in
10 the -- the CDOs and the --

11 MR. SHOTTON: The monoclines, yeah.

12 THE COURT: -- CDOs squared, and the monoclines,
13 exactly. And in that case we had claimants come in who
14 similarly were represented, not every single one of them,
15 but lawyers came in representing groups of them. It kind of
16 became the symbol for the whole -- the whole class.

17 So -- so I don't know if you're telling me that
18 you find it troubling that each of the law firms that is
19 appearing here seems to be representing one from -- one from
20 each of the different buckets. I don't --

21 MR. SHOTTON: Well my -- your interpretation of
22 Judge Peck's comments is perhaps different than mine was.
23 My interpretation of what he said was that he wanted the
24 Court to be able to consider the employee claimants in their
25 distinct classes, and he -- my understanding was that he

1 charged Lehman with the responsibility of organizing those
2 classes, and then as a side comment this would also be far
3 more efficient for the employees because then each class can
4 only -- can have one law firm representing. You have to
5 share the cost amongst that class, that's obviously cheaper
6 and more efficient than having half a dozen law firms all
7 covering the same things.

8 THE COURT: Right.

9 MR. SHOTTON: I --

10 THE COURT: Well if -- and I'll ask Mr. Miller,
11 I'm happy to go back and look at the transcript of that day,
12 but my impression of it is that he was looking for there to
13 be a process --

14 MR. SHOTTON: Uh-huh.

15 THE COURT: -- which there was and was heavily
16 negotiated that would serve as an opportunity for anyone and
17 everyone who wanted to be heard to be able to be heard.

18 MR. SHOTTON: Uh-huh.

19 THE COURT: And you and Ms. Jao before you
20 obviously rose to the occasion to appear here and then we
21 have groups of others represented by the lawyers. And
22 beyond that it's difficult for the Court to kind of go out
23 and on an individual claimant basis, you know, ask for
24 them --

25 MR. SHOTTON: Uh-huh.

1 THE COURT: -- to participate. We -- you know,
2 the concept is notice and an opportunity to be heard, and
3 today is that day.

4 So, Mr. Miller, do you have the transcript and is
5 there something that I'm missing in terms of what Weil,
6 Gotshal was tasked or what Lehman was tasked with in order
7 to get us to today?

8 MR. MILLER: Your Honor, Ralph Miller.

9 We don't believe there is anything that the Court
10 is missing. We did understand and we did undertake to serve
11 operative documents on all the pro se participants so they
12 had a flow of information.

13 THE COURT: Uh-huh.

14 MR. MILLER: We made suggestions during that
15 hearing that all the people on the phone expressed their
16 views about whether they wanted to be heard, and some people
17 said they would like to be heard, and there was a discussion
18 in that transcript about whether it should be bifurcated
19 into two hearings. The one hearing --

20 THE COURT: The represented and the non-
21 represented?

22 MR. MILLER: Yes. And we thought that was
23 inefficient and I think Judge Peck believed that was
24 inefficient, and some of the people who did not have an
25 order said they'd like to get to speak at the same time and

1 they'd like to be integrated, so --

2 THE COURT: Okay.

3 MR. MILLER: -- Judge Peck decided that it would
4 be an integrated proceeding.

5 He also decided to give the pro se claimants the
6 opportunity to come watch the represented claimants and the
7 opening statement if they wished to do so so that they could
8 gain the background information --

9 THE COURT: Right.

10 MR. MILLER: -- in the first day --

11 THE COURT: Right.

12 MR. MILLER: -- and then in a later day if they
13 wished to speak or not speak they could do so.

14 I don't know where Mr. Shotton was here yesterday
15 or not.

16 MR. SHOTTON: I was here yesterday.

17 THE COURT: Okay.

18 MR. MILLER: So he has had the benefit of that
19 process.

20 THE COURT: Okay.

21 MR. MILLER: And we have received inquiries from
22 people and we have consistently indicated what the options
23 were I believe to come -- you know, participate in the
24 pretrial which we also made available by telephone and let
25 people know in the notice --

1 THE COURT: Well, we did -- we did -- our chambers
2 did receive a number of phone calls, and you know, the usual
3 rules of the court here are that if you're in Manhattan you
4 have to come, and in this case my chambers was instructed
5 that anyone who calls and wants to participate
6 telephonically in this hearing was to be given permission to
7 do so, no questions asked.

8 So I don't know -- you know, there are rules about
9 the Court communicating with the parties, so my chamber
10 staff deals with that and I was advised that anyone who
11 called was given the opportunity to call in.

12 MR. SHOTTON: Uh-huh.

13 THE COURT: So -- so again, Mr. Shotton, I don't
14 know where to go with your observation. I will go back and
15 look at that transcript to see if there's some defect, but
16 you yourself are here --

17 MR. SHOTTON: Well --

18 THE COURT: -- and are doing --

19 MR. SHOTTON: -- it's possible that I over
20 interpreted what he meant and I -- it's possible that I was
21 thinking that he wanted to make the process very efficient,
22 which would have been the case had each of the classes been
23 distinct classes and each class been represented by one law
24 firm, you wouldn't have had some of the kind of confusion
25 that you -- you know, you heard yesterday when a single -- a

1 representative of a single law firm is talking about
2 multiple different claimants and different types of claims
3 that they had. That could have been simplified a lot.

4 I mean I've -- I've appeared pro se because I
5 can't afford paying for representation, but I have taken
6 part in a large number of conference calls over the last two
7 years and so, and I have to say that they've been -- they've
8 been pretty chaotic. And I think that that is perhaps
9 emblematic of the war of attrition that happened between
10 Lehman and the claimants, they were -- they were quite fine
11 that the process being efficient and be dragged out because
12 that would then motivate claimants -- how so many other
13 previous employee claimants had abandoned their claims
14 because they could no longer afford to continue
15 representation and they became frustrated with the process
16 so they abandoned their claims.

17 So as far as I can see it was actually part of a
18 deliberate strategy. It wasn't just incompetence or
19 misunderstanding. But that's -- perhaps I was over
20 interpreting Judge Peck's intentions that the process be
21 efficient.

22 THE COURT: Well, I think it's important to react
23 somewhat to the statement that it's a deliberate strategy,
24 because certainly, you know, the suggestion that the Court
25 is somehow encouraging or tolerating something that's

1 improper is not -- is not something that I cannot -- not
2 react to.

3 My view of what Judge Peck did, as reflected in
4 the stipulation, and the folks -- and I think it bears
5 saying that -- and I actually -- I wrote a decision in the
6 Ambac case in which I did not allow the claims of the
7 shareholders, and in that decision I said -- I indicated
8 that, you know, the anger and the disappointment of the
9 shareholders --

10 MR. SHOTTON: Uh-huh.

11 THE COURT: -- in that case was completely
12 understandable, but that when you're obligated to apply the
13 law, right, I --

14 MR. SHOTTON: I understand.

15 THE COURT: -- you know, I'm not -- you wouldn't
16 want judges to be anarchists, right, and not apply the law,
17 and there's a great debate over the extent to which we
18 should do what's fair as opposed to what the law requires.

19 MR. SHOTTON: I realize that, you know, the law
20 and justice are not one in the same thing. I appreciate
21 that.

22 THE COURT: And they're not -- you know, and I'm a
23 great --

24 MR. SHOTTON: But I would like to believe that the
25 two at least have a noting acquaintance.

1 THE COURT: Well then if you'd like to do some
2 reading then I wrote a decision in a case called Patriot
3 Coal in which I said the question was what is justice? So
4 I've thought about this a lot.

5 MR. SHOTTON: Uh-huh.

6 THE COURT: And I do believe that I have to apply
7 the law and that I also do have to do justice, but I do have
8 to apply the law.

9 And what this has to do with the Lehman estate is
10 that there is this bankruptcy structure, and the folks who
11 represent Lehman are obligated to implement it, and they
12 don't have a dog in the fight in the sense of wanting to
13 allow one claimants' claim versus another. They don't get
14 paid more or less, they just have to sort the claims so
15 that --

16 MR. SHOTTON: Well, I can construe a possible
17 motive though, Your Honor.

18 THE COURT: What motive would that be?

19 MR. SHOTTON: Well the -- there are various firms
20 available in administering Lehman's estate right now, and
21 you might think as you just implied, that they are
22 dispassionate, disinterested third parties, but I believe
23 they do have a vested interest, because they -- these firms
24 confidently expect to get future business to have as future
25 clients the corporate claimants to Lehman's estate, whereas

1 they have no reason to expect to get any future business at
2 all from the employee claimants, and that creates a motive
3 for them to unfairly discriminate against the employees in
4 order to benefit the corporate claimants and to line their
5 own pockets in the process, Your Honor.

6 THE COURT: Okay. Well, I understand that that's
7 your view, and I don't -- I have to decide this matter and
8 every matter --

9 MR. SHOTTON: Of course.

10 THE COURT: -- as a question of law and listening
11 to the facts, and I'm quite happy that you came in today,
12 and I appreciate your presentation, it added a lot --

13 MR. SHOTTON: Thank you for your indulgence, Your
14 Honor.

15 THE COURT: -- to what I heard yesterday.

16 And let me just ask Mr. Miller if he wanted to ask
17 you any questions in the nature of cross-examination?

18 MR. MILLER: I do briefly, Your Honor.

19 THE COURT: All right. It's always a little
20 unusual when we have a pro se claimant, but if I could ask
21 you to take the witness stand that would be great.

22 MR. MILLER: And he is --

23 THE COURT: I will now administer the oath.

24 (Witness Sworn)

25 THE COURT: Okay. Please have a seat,

1 Mr. Shotton.

2 CROSS-EXAMINATION

3 BY MR. MILLER:

4 Q Mr. Shotton, my name is Ralph Miller, I don't think you
5 and I have spoken before, but you have made a number of
6 calls I understand --

7 MR. MILLER: Excuse me, I'm sorry, Your Honor,
8 apparently --

9 THE COURT: Oh, try it again.

10 MR. MILLER: Yes.

11 BY MR. MILLER:

12 Q Mr. Shotton, my name is Ralph Miller, I don't believe
13 you and I have spoken; is that correct?

14 A We have not.

15 Q You have however called my colleague, Ms. Alvarez, on a
16 number of occasions and sought information as I understand?

17 A Yes.

18 Q Now you made reference to a series of conference calls
19 you were in.

20 A Yes.

21 Q Were those conference calls with other claimants and
22 counsel that you were referring to? I don't want you to get
23 into any contents? Yes.

24 A Yes, they were.

25 Q Weil, Gotshal was not in those conference calls,

1 correct?

2 A I think some of the conference calls Weil, Gotshal was
3 at, some they were not.

4 Q All right. You did file a declaration in this case; is
5 that right?

6 A Yes.

7 Q And this declaration appears to be based on some sort
8 of form you received; is that correct?

9 A Yes.

10 Q Yes. Who did you receive that form from?

11 A Well, I actually saw a lot of forms from the -- what's
12 the -- there's some court service which distributes all of
13 the papers from all of the claimants across -- to all of the
14 interested parties. So I received a large number of emails
15 to my work and home email address with attached subject --
16 attached forms to them.

17 So having seen that -- those started to come
18 through I think on March the -- around March the 2nd, March
19 the 3rd. Having seen those I decided I should put in a
20 statement of my own.

21 So I had earlier received from one of the -- one
22 of the attorneys a draft copy of an earlier version of such
23 a thing, which I, in combination of that that's where I had
24 seen other claimants make, created my own version of that
25 and submitted that to the court I think on like I said March

1 the 3rd or March the 4th.

2 Q So you were in contact with other claimants and their
3 counsel? Again, I'm not asking you for the content of
4 that --

5 A Yes.

6 Q -- but you were able.

7 And was there any effort made to try to organize
8 into coherent groups in that conversation -- those
9 conversations you had?

10 A Not that I'm aware of, no.

11 Q All right. Did -- are you aware of the fact that LBHI
12 did not want to have this evidentiary hearing?

13 A I wasn't aware of that I don't think.

14 Q All right. Do you know whether or not LBHI suggested
15 that it didn't want to have discovery in this case?

16 A I can't recall, no.

17 Q All right. So you don't know with regard to this war
18 of attrition that you've talked about whether LBHI sought
19 the discovery and this hearing or someone else did --

20 A No.

21 Q -- as a matter of fact.

22 You did understand that you had the right to
23 select your own counsel if you wished to and you understand
24 that that's not up to LBHI to find counsel for you?

25 A (Indiscernible - 01:06:19).

1 Q All right. I want to talk just a little bit about your
2 testimony. You are classified as a managing director?

3 A That's correct.

4 MR. MILLER: Your Honor, may I approach?

5 THE COURT: Yes.

6 (Pause)

7 THE COURT: Thank you.

8 BY MR. MILLER:

9 Q I have handed you --

10 THE COURT: Mr. Miller, I just -- I just want to
11 interrupt you for a second because of this -- because we've
12 gone back in time with respect to Judge Peck's tenor, and I
13 just want to illuminate a little bit about -- and I know
14 it's odd in the middle of the cross-examination, but you
15 know, when a judge retires the judge's docket of cases gets
16 distributed to colleagues. That's what happens. And
17 there's a process that we go through.

18 There was a determination made that I would
19 receive the Lehman body of cases and no others, because the
20 Lehman group of cases is so substantial.

21 And there's a transition period that happens in
22 which the departing judge talks to the judge who's assuming
23 the cases so that in order to insure that the parties are
24 not prejudiced by the transition.

25 That being said though it's my case now and I have

1 attempted to respect and accommodate what Judge Peck did for
2 those five years, but I get to do my own thing, so to speak.

3 And in this case Judge Peck had indicated at the
4 previous hearing on this matter that he intended to follow
5 the Enron decision and that the further proceedings that
6 were to take place were to give folks the opportunity to
7 demonstrate why Enron should not be followed with respect to
8 them. That's all shorthand for the ruling that he was
9 poised to make on that date.

10 So that I just wanted you to understand that I
11 understand the background, and whether or not Judge Peck
12 would ultimately have ruled one way or other and that ruling
13 is the same that I will eventually hand down here, we don't
14 know, but I don't want -- I hope people don't feel that
15 they've been prejudiced by the fact that -- prejudiced or
16 advantaged by the fact that we've gone from one to the
17 other. I think the judges in this building pride themselves
18 on -- you know, trying to take a fairly consistent approach
19 in the application of the law.

20 So I just wanted to let you know that I am doing
21 my level best in terms of making it as non-chaotic as
22 possible, and I don't know that I'm succeeding, but I just
23 wanted to give you that little bit of background.

24 I apologize, Mr. Miller.

25 MR. MILLER: Thank you, Your Honor. I was going

1 to change topics --

2 THE COURT: Go ahead.

3 MR. MILLER: -- unless there were any other issues
4 that you want me to --

5 THE COURT: No.

6 MR. MILLER: -- explore on this issue of the right
7 to choose counsel and --

8 THE COURT: Yeah, go ahead.

9 MR. MILLER: -- who can organize them.

10 And I have just passed out a document which is --
11 if you'll remind me what exhibit this stipulation is this?

12 UNIDENTIFIED SPEAKER: Seven.

13 MR. MILLER: Seven? All right, I believe, Your
14 Honor, this is Exhibit 7 to the stipulation already, which
15 is CL001. So it doesn't need to be remarked, but this is a
16 convenience copy.

17 THE COURT: Okay.

18 MR. MILLER: And I believe --

19 BY MR. MILLER:

20 Q Would you look at this and see if you recognize this as
21 a -- a document dealing with the grant of RSUs?

22 A It is, yes. I don't recall this document in
23 particular, but there are many similar kinds of documents
24 that I did receive while I was at Lehman and I've seen them
25 in the evidentiary (indiscernible - 01:10:55) since. So

1 yes, I recognize that's what it is.

2 Q Well, did you understand that one of the stated
3 purposes of the restricted stock unit program was to give
4 you a feeling of ownership in the firm?

5 A I viewed the principal reason why it was held as an
6 employee retention device. It secondarily had the role of
7 (indiscernible - 01:11:35) employees to behave like bonus.

8 Q Did you understand that you would receive the benefit
9 of stock appreciation at the end of the five years if you
10 met the conditions and remained with Lehman for five years?

11 A I understood that this promise to convert the RSUs into
12 equities after five -- five years after the grant date would
13 happen and that had those conversions taken place that the
14 equity when delivered would be worth whatever it is now
15 worth with a higher or lower or whatever.

16 Q Now I understand that your position was the head of
17 global risk management; is that correct?

18 A Global market risk management.

19 Q Global market risk management. Okay. What is global
20 market risk management? What --

21 A Market risk is the risk that a firm experiences as a
22 result of changes in interest rates, in credit spreads, in
23 equity prices, foreign exchange prices, volatility levels.
24 It's the risk that a firm has to value its -- of its
25 exposures as a function of changes in market levels as

1 opposed to credit risk, for example, credit risk being the
2 exposure that a firm has because of the failure to pay via a
3 counterparty.

4 So market risk is specifically to do with changes
5 in market prices and levels of volatility risks.

6 Q Did this include such things as the derivatives
7 programs --

8 A Yes.

9 Q -- that were involved?

10 A Yes.

11 Q And this included such thing as changes in the value,
12 for example, of special purpose vehicles, so-called SPVs,
13 that held residential mortgages?

14 A The underlying -- the changes in the value of the
15 underlying collateral is driven by market risk, but the risk
16 that the firm has then is actually counterparty credit risk,
17 so that's a more complicated case which actually covers both
18 elements of market and credit risk, but certainly there are
19 elements of market risk.

20 Q All right. Did you feel that as the head of a global
21 market risk management you did have some opportunity to
22 contribute to the financial success of the Lehman
23 enterprise?

24 A Yes.

25 Q Now did you feel that you also had some responsibility

1 to protect it as best you could --

2 A Yes.

3 Q -- from misfortune?

4 A Yes.

5 Q In fact it did suffer misfortune?

6 A It did indeed.

7 Q And much of that misfortune was as a result of market
8 risk; is that not true?

9 A Correct.

10 Q Were you aware at all that you had a personal
11 involvement in your management of market risk when you were
12 doing it?

13 A A personal involvement in the sense that --

14 Q Well, I'm -- let me say a personal financial stake both
15 in the fact that your job depended on it and the fact that
16 your RSUs depended on it?

17 A Indeed.

18 Q Okay. Obviously as a head of market risk management
19 you were aware of the fact that stock can go up and stock
20 can go down?

21 A Yes.

22 Q And you did understand, whether you liked it or not,
23 that the way the RSU program was structured the stock of
24 Lehman could go down and your RSU value at the end of five
25 years, assuming it was still in operation and you met the

1 conditions, could go down?

2 A Of course, but the value of the equity could go up or
3 down, but RSUs are not equity. None of my RSUs converted.
4 My first RSUs were granted in 2004 -- November 2004, five
5 years after grant date, November 2009 is over a year after
6 the firm went bankrupt. So none of my RSUs ever converted.

7 I am not making a claim for diminution of value of
8 equity, either granted or given to me by the firm or paid
9 for. That's not the case. My RSUs never converted. RSUs
10 are not equity. My claim is for the RSUs, not for
11 diminution of value of the equity.

12 Q Well you say your claim is for the RSUs.

13 A Yes.

14 Q You have the RSUs, what do you want to do with the
15 RSUs?

16 A I can do nothing with them. They're simply a promise
17 by Lehman to convert them into equity five years after the
18 grant date, a promise which they failed to carry through.

19 Q Well how do you want to measure your claim then? What
20 is your position on how the money should be measured that
21 had you want to put in your claim?

22 A The best estimate that I have was the value that the
23 RSUs were ascribed at the time they were granted to me, plus
24 the compensation for the fact that I was effectively being
25 asked to -- or told to lend the firm money for five years.

1 If you loan money to somebody for five years you expect to
2 get an interest payment.

3 So there's the value of the equities when they
4 were granted, plus the interest payment on the values of
5 that debt claim, and Lehman had -- and it structured the
6 RSUs, had set that interest rate equal to the dividend
7 payable on the actual equity at the time.

8 Q So in essence you want the money back that went into
9 the RSU program as you see it?

10 A Yes.

11 Q And is that because you think there was something
12 unfair about the way the agreement was reached so that it
13 should be set aside?

14 A It was what it was. Whether it was unfair or not I
15 couldn't say.

16 I -- had I been given option to be paid in cash I
17 could have used that cash to go out and buy Lehman equity
18 how I wanted. It traded freely on the stock exchange every
19 business day.

20 I didn't uproot my family from England and travel
21 3,000 miles in order to become a Lehman stockholder, I came
22 for employment reasons, and the fact was that part of my
23 compensation or employment was withheld via this promise to
24 convert it to equity. That promise Lehman failed to deliver
25 on that promise because the firm went bankrupt.

1 Q All right. My question, sir, though, first let me be
2 clear. Are you trained as a lawyer, sir?

3 A No, I have no training as a lawyer. My background is
4 in particle physics.

5 Q What I'm trying to understand is as you understand your
6 claim why should though the deal that you understood you
7 made, even though you didn't like it, be set aside and you
8 should get your money back? What is your basis for saying
9 that?

10 A Because all that I had at the time the firm went
11 bankrupt, all that I had was the RSUs. I had no equity,
12 none of those RSUs are converted to equity, which had it
13 done so the equity would have been worthless (indiscernible
14 - 01:18:28) if I hadn't already sold it, but that's not the
15 case. I had the claim in case of my first year at the firm
16 the guarantee of \$1.55 million in compensation, only about
17 one million of which had been paid, and so that -- the
18 additional for that year accumulated over the course of
19 several years several million dollars worth of unpaid
20 compensation. That was what I felt that I was -- I was
21 still owed because the firm was no longer in a position to
22 carry through its promise to convert -- to convert these
23 RSUs into equity.

24 Q So because the firm you say was no longer in a position
25 to carry through its promise to convert do you understand

1 what the affect of this proceeding would be if your -- if
2 your claim was converted to equity?

3 MR. KAPLAN: Objection, Your Honor, that's a legal
4 -- he's asking for a legal conclusion.

5 THE COURT: What --

6 MR. MILLER: I'm asking what he understands, Your
7 Honor.

8 THE COURT: First of all, it's entirely clear to
9 me on what basis you're objecting.

10 MR. KAPLAN: Well somebody has -- somebody has to.

11 THE COURT: No, no, no, nobody actually has to.

12 First of all I want to make an observation that
13 once again, notwithstanding the highly negotiated procedure
14 that was agreed to by all the parties, that we are taking
15 what appears to be an unlimited amount of time to insure
16 that Mr. Shotton is heard.

17 There was an allocated 20 minutes, we've now been
18 here for almost an hour and a half over two witnesses. But
19 again, in the spirit of trying to give everybody, you know,
20 an opportunity to say everything that they want to say we're
21 doing that. I'm not going to get into a situation where the
22 group of lawyers is going to inject themselves.

23 So, Mr. Miller, I'm going let you finish with
24 Mr. Shotton and then we're going to move on.

25 MR. MILLER: All right. Your Honor, I think in

1 the interest of time I'll withdraw my question and I will
2 conclude with Mr. Shotton.

3 THE COURT: All right. Thank you very much,
4 Mr. Miller.

5 Okay, Mr. Shotton, is there anything that you --
6 else -- anything more you wanted to say subsequent to the
7 cross-examination by Mr. Miller? Typically a witness -- if
8 a lawyer were representing you now the lawyer would ask you
9 some additional questions so that you could clarify --

10 THE WITNESS: I don't think there's anything which
11 is actually germane to the --

12 THE COURT: -- earlier statements that you made.

13 THE WITNESS: -- situation here, but Mr. Miller
14 did ask me questions about my role and my personal
15 responsibility for market risk management at Lehman Brothers
16 and Lehman's failure. I would simply point you to the
17 examination which (indiscernible - 01:21:06) conducted into
18 Lehman's failure, and if you read that you will see many,
19 many citations from me where I'm quoted as warning senior
20 management about the level of risk that it was taking and
21 about board presentations that I put today which was later
22 amended by other people to remove elements of warning that I
23 put there.

24 So my reputation as far as I'm concerned is
25 completely sound.

1 THE COURT: All right. I very much appreciate
2 that. All right, thank you very much.

3 THE WITNESS: Thank you.

4 THE COURT: Okay. We have 35 minutes left before
5 noon where I have a hard stop because I scheduled something
6 at noon in reliance on the schedule here.

7 So do any of the represented claimants want to
8 make use of this 35 minutes?

9 MS. SOLOMON: Your Honor --

10 THE COURT: I have a couple of volunteers.

11 MS. SOLOMON: -- I would like to make a
12 presentation on behalf of Art Kenny who is a pro se
13 claimant.

14 THE COURT: Yeah, see this is the part of it,
15 Ms. Solomon, that I don't understand. We now have -- we had
16 an understanding with respect to pro ses, and now a pro se
17 has morphed into a represented claimant and is going to be
18 using time.

19 MS. SOLOMON: Your Honor --

20 THE COURT: So --

21 MS. SOLOMON: -- I thought we went through this
22 yesterday --

23 THE COURT: Well, we did go through it yesterday,
24 but --

25 MS. SOLOMON: -- and we did have an understanding

1 --

2 THE COURT: -- when I had time to reflect on --
3 you know, procedural fairness is very important to me, and I
4 just want the folks -- the claimant folks to understand that
5 -- that the Lehman side -- and I know you necessarily feel
6 this way -- but the Lehman side is putting up with a
7 complete abrogation of the negotiated process by this side
8 of the room, and frankly --

9 MS. SOLOMON: I disagree with that, Your Honor.

10 THE COURT: -- and frankly by me.

11 MS. SOLOMON: I disagree wholly with that, Your
12 Honor. I have fully followed the procedure and I have done
13 everything I can to follow the procedure.

14 THE COURT: I --

15 MS. SOLOMON: And I don't think it's correct, Your
16 Honor, to just lock everybody on this side of the table --

17 THE COURT: The claimants were given three hours.
18 We are now going -- we are now about to enter into the
19 beginning of the sixth hour, and --

20 MS. SOLOMON: And I've fully abided within that
21 three-hour limit, Your Honor.

22 THE COURT: Okay. I'm not meaning to make it
23 personal. I'm making the observation that it would be
24 wholly within the rights of the Lehman party to say this is
25 beyond what was negotiated, the claimants are done. And I

1 have to tell you, I think if Judge Peck were sitting here he
2 would look at the stipulation and say you bargained for
3 three hours, your three hours is up, we're done.

4 So I just want to be perfectly clear that I am
5 doing this notwithstanding the fact that I read the
6 stipulation, because I do not want anyone to argue that they
7 haven't had a full and fair opportunity to be heard.

8 MS. SOLOMON: I --

9 THE COURT: Period, full stop.

10 MS. SOLOMON: Your Honor, I understand perfectly
11 where you're coming from. I'd just like to give you a
12 little more background in terms of this one particular
13 claimant and why I am intending to speak on his behalf.

14 He filed -- he appeared --

15 THE COURT: Mr. Miller, hold on, let her finish
16 and then I'll hear from you, okay?

17 MS. SOLOMON: He appeared -- his name is Arthur
18 Kenney, Your Honor, and he has appeared in these proceedings
19 from the start as a pro se claimant.

20 THE COURT: Right.

21 MS. SOLOMON: And with regard to the briefing
22 schedule Mr. Kenny also appeared as a pro se claimant and he
23 filed a brief in --

24 THE COURT: Right.

25 MS. SOLOMON: -- support of his position.

1 After he filed his brief I think he became a
2 little unnerved and he was very concerned about speaking at
3 the hearing on his own behalf. And he approached me at that
4 point. I didn't reach out to him. He approached me and he
5 asked me if I could represent him at the hearing. And I
6 agreed to do so and I promised that I would represent him at
7 the hearing. And his particular claim is different from all
8 of the claims that are encompassed within the represented
9 participants brief.

10 He has a unique issue, Your Honor, although there
11 are I understand some other claimants that have this issue
12 as well, he's a claimant that was never granted RSUs and
13 there was compensation withheld and he's a sales commission
14 person, Your Honor.

15 THE COURT: The part that I don't understand,
16 Ms. Solomon, is that going into yesterday's hearing I would
17 have thought that all the claimants would have sat down and
18 said, okay, we have three hours, who gets what? And that
19 your portion of that three hours at that point yesterday
20 would have then included Mr. Kenny, but apparently it
21 didn't, because now you're saying that you want to be deemed
22 to be a pro se, and apparently the three hours was never
23 divvied up among you folks, and there's just -- the three
24 hours was just completely ignored.

25 If that was the case then we shouldn't have wasted

1 all the time and the estate resources negotiating the
2 procedure. It just was a waste. It was -- there was coming
3 into yesterday's hearing you guys didn't have a game plan,
4 and now basically I'm giving you a free pass and allowing
5 you to be heard, and I just think it's important for you to
6 understand that I'm doing that, because it's -- we're
7 ignoring the stipulation entirely.

8 MS. SOLOMON: Your Honor, we each represent our
9 own clients, and I think --

10 THE COURT: Then you should have never agreed as a
11 group to three hours, because --

12 MS. SOLOMON: Perhaps, Your Honor, but we were
13 also asked by the Court and we made a very, very sincere
14 effort to try to streamline the procedures, Your Honor, we
15 all take that with a grain of salt of course because this
16 has not turned out to be the most streamlined, but --

17 THE COURT: Okay. We're now -- no, it has not
18 been streamlined at all.

19 MS. SOLOMON: -- but the effort -- but appearing
20 as represented participants was made in response to the
21 Court that we tried to coordinate, and it was our sincere
22 effort to have the procedures streamlined as possible.

23 THE COURT: Well, all right, let me just say that
24 I see some folks sitting in the gallery who were here
25 yesterday, and I -- if there are other folks here who want

1 to be heard and need to be heard before noon today I want to
2 know about that, because Ms. Solomon, you're going to be
3 here.

4 MS. SOLOMON: I know, Your Honor.

5 THE COURT: All right. So please have a seat.

6 MS. SOLOMON: At your convenience.

7 THE COURT: And let me hear if there's anybody
8 who's here who needs to be heard between now and noon?

9 MR. KAPLAN: Your Honor, Mr. Ramallo is here,
10 Mr. Reynolds is here, and Mr. Schrager has a witness --

11 THE COURT: Okay, I --

12 MR. KAPLAN: -- who is here, who was here
13 yesterday.

14 THE COURT: I'm -- I don't -- I am not going pick.
15 I am asking --

16 MR. KAPLAN: Right. Mr. -- I will defer to
17 Mr. Schrager's witness who was -- who wanted to testify
18 yesterday in the worst way, so if he wants to go forward he
19 should.

20 THE COURT: Mr. Miller, you had wanted to say
21 something before.

22 MR. MILLER: Yes, Your Honor, at the appropriate
23 time I want to object to Ms. Solomon, who for the first time
24 we learned today represents Mr. Kenny, but I will do that at
25 the appropriate time --

1 THE COURT: All right.

2 MR. MILLER: -- you're going to take that up
3 later.

4 THE COURT: Thank you.

5 All right. Do we have a witness who wants to
6 testify now? And we're going to -- there's a hard stop at
7 noon.

8 MR. SCHRAGER: Yes we do, Your Honor.

9 THE COURT: Okay. Let's get -- let's do it.

10 MR. MILLER: Your Honor, just to clarify --

11 THE COURT: Is there anyone else in the courtroom
12 -- is there anyone else in the courtroom who is a pro se
13 claimant who wishes to be heard? Yes, sir?

14 MR. MAIA: I'm a pro se, I filed a claim.

15 THE COURT: Come up.

16 MR. MAIA: Yes, thank you. Good morning, Your
17 Honor.

18 THE COURT: Good morning. Could you just --

19 MR. MAIA: Yes.

20 THE COURT: -- hold on for one second, okay?

21 So this morning was the time that was set aside
22 for pro se claimants to be heard, and yesterday I said that
23 I would hear all the pro se claimants who wanted to be heard
24 this morning. So if there's a witness who's appearing who
25 is represented -- who is one of the represented parties then

1 according to the stipulation and what we said yesterday I'm
2 not going to hear that person now.

3 I'm trying very hard to not have people get
4 aggravated and annoyed at the timing issues, but I'm
5 struggling with what to do, because every time I try to get
6 things to be orderly something else happens.

7 So I think that by the rules we all agreed on
8 yesterday I need to hear from this gentleman because ten to
9 12:00 was the time set aside for pro se claims.

10 So I apologize for anyone who was told by counsel
11 to come this morning, because yesterday I believe I made it
12 very clear that the morning was set aside for pro ses and
13 that the afternoon beginning at 1 o'clock would be when we
14 would conclude the represented claimants' portion of the
15 case, notwithstanding the fact that we are completely over
16 the allotted time limit. Okay?

17 So go ahead, sir. Give me your name, please.

18 MR. MAIA: Thank you, good morning. My Alexandre
19 Catalao Maia.

20 THE COURT: Okay.

21 MR. MAIA: I filed --

22 THE COURT: How do you spell your last name,
23 please.

24 MR. MAIA: M-A-I-A. Middle name is C-A-T-A-L-A-O.
25 I have claim number 17760.

1 THE COURT: Okay. Go ahead.

2 MR. MAIA: Well, I -- in the interest of time --
3 well good morning for everyone.

4 THE COURT: You're titled to 20 minutes and you
5 can use your full 20 minutes, all right?

6 MR. MAIA: Thank you.

7 I had prepared some remarks, I do believe that
8 they will not add any new facts to what has been discussed
9 already here before.

10 If I'm required to make a statement in order to
11 keep my claim alive then I would like to do so. If it is
12 not a requirement then I will not make the statements in the
13 interest of time for all of you --

14 THE COURT: Okay.

15 MR. MAIA: -- as I understand time is short.

16 THE COURT: You're not required, you're certainly
17 -- can make any statement that you like. You're not
18 required to. This was an opportunity for any individual
19 claimant --

20 MR. MAIA: Uh-huh.

21 THE COURT: -- to advise the Court of what it is
22 about his or her individual claim that distinguishes it from
23 the type of claim that Judge Peck had identified as a claim
24 that would be subordinated.

25 So if there's anything in particular about your

1 particular circumstances that you want to bring to the
2 Court's attention this is -- this is your opportunity and
3 I'm happy to listen.

4 MR. MAIA: Thank you, Your Honor.

5 There isn't anything which is different for --
6 about my claim relative to all the claims that have been
7 discussed --

8 THE COURT: Okay.

9 MR. MAIA: -- both by counsel as well as by
10 individual witnesses.

11 If I need to make the same points to represent my
12 claim then I would like to do it. If it's not a requirement
13 and the arguments which have been made already in court
14 would benefit me in the case of a ruling -- a favorable
15 ruling then I will just open this time for other people who
16 would like to be heard.

17 THE COURT: Okay. All right. That's fine.
18 You -- you're not required to say anything in order to have
19 your claim considered as part of this -- as part of this
20 proceeding.

21 MR. MAIA: Okay. Thank you very much.

22 THE COURT: Okay. Thank you very much.

23 MR. MAIA: Thank you.

24 THE COURT: All right. I'll ask one more time,
25 are there any pro se claimants who are in the courtroom, who

1 are on the phone -- or who are on the phone who would like
2 to speak on their own behalf? Okay. It's 11:36, let the
3 record reflect there have been no further responses.

4 Okay, would you like to call a witness now?

5 MR. SCHRAGER: I would --

6 THE COURT: Mr. Miller?

7 MR. MILLER: Your Honor, I just want to clarify
8 particularly if he's going to call a witness I think he's
9 going to call -- I don't see that we're going to be able to
10 complete her testimony and cross between now and noon. So
11 if we can break and make sure -- who are you gowning to
12 call, Mr. -- what's your witness?

13 THE COURT: What witness are you --

14 MR. SCHRAGER: Ms. Karen Krieger.

15 MR. MILLER: Yes.

16 THE COURT: All right.

17 MR. MILLER: Ms. Krieger has a good deal of
18 material already, Your Honor, so I just want to note we're
19 happy to start her, but she's going to need to come back.

20 THE COURT: All right. What's your preference?
21 I'd prefer -- I'd prefer not to have a break in the middle
22 of direct examination. If you don't believe you can
23 complete the direct before 11:59 then I'd prefer to come
24 back at 1 o'clock and do it then. It's not a -- it's not a
25 procedure I follow with a witness unless I absolutely have

1 to to have a break in the middle of the testimony.

2 MR. SCHRAGER: May I have a moment, Your Honor?

3 THE COURT: Sure.

4 (Pause)

5 THE COURT: My recollection is that between 1:00
6 and 2:00 we had earmarked that time as at least one of the
7 Neuberger witnesses; is that correct?

8 MR. KAPLAN: Ms. Stiefel is coming down at 1:00
9 because I --

10 THE COURT: And how long do you believe her
11 examination will take?

12 MR. KAPLAN: The direct I don't think will take 15
13 or 20 minutes --

14 THE COURT: All right.

15 MR. KAPLAN: -- I would think. I mean -- or as I
16 said we can use her declaration and let Mr. Miller cross
17 from that if that will abbreviate -- you know, abbreviate --

18 THE COURT: All right. Well, Mr. Miller can think
19 about -- can think about that option, but then we would be
20 able to begin with this witness then at a quarter to 2:00?

21 MR. SCHRAGER: Your Honor, the witness is
22 committed to making a contribution here and she will make
23 herself available --

24 THE COURT: Okay.

25 MR. SCHRAGER: -- this afternoon.

1 THE COURT: All right. Well, I apologize, I'm --

2 MR. SCHRAGER: I think the --

3 THE COURT: -- I seem to be unable to impose an
4 order on this situation, and I am very frustrated about it,
5 and I -- at the end of the day I want everybody who wants to
6 be heard to be heard. So that's what we're going to do.

7 MR. KAPLAN: Your Honor, if you like Mr. Ramallo
8 is in the courtroom, I know I can get his direct done before
9 12 o'clock --

10 THE COURT: But then -- then we're going to come
11 back and we have a witness who's going appear at 1 o'clock
12 and I don't want to have a delay between a direct and a
13 cross. So --

14 MR. KAPLAN: Okay.

15 THE COURT: -- it's just not going to work.

16 So why don't I let you go now, I want you to work
17 out as best as you have every single thing about how things
18 are going to happen starting at 1 o'clock this afternoon and
19 then we'll just come back and we'll start then at 1 o'clock
20 with Mr. Ramallo and then your witness can take the stand
21 after that.

22 MR. SCHRAGER: Well we have Ms. Stiefel at --
23 Ms. Stiefel at 1 o'clock --

24 THE COURT: Ms. Stiefel.

25 MR. SCHRAGER: And Mr. Ramallo --

1 THE COURT: So we have three witnesses this
2 afternoon, right?

3 MR. KAPLAN: We have three witnesses.

4 THE COURT: Stiefel --

5 MR. KAPLAN: Unless Your Honor lets me put
6 Mr. Reynolds on.

7 THE COURT: -- Ramallo, and Ms. Krieger, is
8 that --

9 MR. SCHRAGER: That's correct, Your Honor.

10 MR. KAPLAN: And Mr. Reynolds if Your Honor will
11 allow it. But we have the objection from Mr. Miller.

12 THE COURT: I thought I said yesterday that I was
13 not allowing Mr. Reynolds. Am I making that up?

14 MR. KAPLAN: No, I thought you said we'd have to
15 wait and see if there was proper --

16 THE COURT: If there was time.

17 MR. KAPLAN: -- if there was proper rebuttal.

18 THE COURT: Right.

19 MR. KAPLAN: Based on the cross-examination.

20 THE COURT: Exactly, right.

21 MR. KAPLAN: So that we can't decide that now.

22 THE COURT: Right.

23 MS. SOLOMON: And then the presentation from
24 Mr. Kenny, Your Honor.

25 THE COURT: All right. Well, I'm going to hear

1 from Mr. Miller about the propriety of that later.

2 MS. SOLOMON: Okay. And just for purposes of
3 reminding the Court I very clearly stated on the record
4 yesterday that was my intention and there was no objection
5 related to that.

6 THE COURT: Okay.

7 MR. MILLER: I just want to clarify, Your Honor,
8 Ms. Solomon did not tell us who she represented yesterday,
9 and Mr. Kenny is in a unique position and has submitted a
10 lot of material, and for him not to be here, I don't believe
11 he's here, and for her to speak on his behalf really is a
12 surprise to us. He should have filed a brief, we should
13 have known something about what's going on. If he's here
14 personally that's a different issue and I'm going to
15 encourage her to bring him in personally.

16 MS. SOLOMON: He filed a brief and certainly they
17 had an ability to --

18 THE COURT: He filed a brief as a pro se claimant.
19 Yesterday you said I'm going to be appearing on behalf of a
20 pro se claimant. You did not identify who it is. I reacted
21 yesterday to the news that somehow a pro se claimant was now
22 going to be become a represented claimant and that there was
23 going to be extra time afforded to that person. That's
24 completely contrary to the procedure.

25 So you folks seem intent on ignoring the

1 stipulation because you want to say what you're going to
2 say. And again, not for you, but for the sake of the
3 claimants I'm going go along with it potentially over the
4 objection of LBHI.

5 We're going to take a break now, we're going to
6 come back at 1 o'clock, and we're going to finish this
7 afternoon. And I encourage you to work out every logistical
8 detail you can over the next hour and 15 minutes, all right?

9 Thank you.

10 MS. SOLOMON: Thank you.

11 THE COURT: Thanks Francis, 1 o'clock, okay?

12 (Recessed at 11:43 a.m. and reconvened at 1:11 p.m.)

13 THE COURT: Please have a seat. All right. Are
14 we ready?

15 MR. KAPLAN: We are, Your Honor.

16 THE COURT: Okay. I see a bag, but I don't see
17 Ms. Solomon.

18 MR. KAPLAN: Ms. Solomon --

19 THE COURT: Is she all right?

20 MR. KAPLAN: -- went out -- yes, she's fine. She
21 waived her appearance. She's out speaking with a client,
22 and she said we could proceed in her absence.

23 THE COURT: Okay. All right. So what are we
24 starting with now?

25 MR. KAPLAN: Stephanie Stiefel on behalf of the

1 Neuberger claimants.

2 THE COURT: Okay. Very good. Hold on, Mr.
3 Miller, did you have a comment first?

4 MR. MILLER: No, assuming they're going to call
5 her live, we don't have a comment.

6 THE COURT: Okay.

7 MR. MILLER: That's fine. Are you going to call
8 her as a witness live?

9 MR. KAPLAN: Yeah.

10 THE COURT: Okay. All right.

11 MR. KAPLAN: Right? I mean, unless you want me to
12 proceed with the declaration, and you want to proceed with
13 cross.

14 THE COURT: All right. Ms. Stiefel, would you
15 come up, please?

16 All right. Would you raise your right hand,
17 please?

18 STEPHANIE STIEFEL, WITNESS, SWORN

19 THE COURT: Please have a seat.

20 DIRECT EXAMINATION

21 BY MR. KAPLAN:

22 Q Ms. Stiefel, how are you employed currently?

23 A I work for Neuberger Berman and have been since 1990.

24 THE COURT: Ms. Stiefel, I'm going to ask you to
25 move a little bit forward, and that horizontal black

1 microphone, just move it towards you a bit and please keep
2 your voice up. Thanks.

3 Q Can you tell us your educational background?

4 A Yes. I went to college, I'm a graduate of Queens
5 College, and I'm a Certified Public Accountant.

6 Q And you joined --

7 A Or used to be.

8 Q Used to be.

9 A I haven't practiced in a long time.

10 Q And you joined Neuberger Berman in 1990?

11 A I joined in 1990 as they were building out their high
12 network business. And I was hired to help them grow, and
13 establish new relationships for high net worth individuals.

14 Q And what was -- when you initially joined Neuberger
15 Berman, what was your compensation?

16 A So at my last year at Arthur Andersen I was there ten
17 years. I finally made \$100,000, and when I started at
18 Neuberger Berman, I got exactly the same thing, which was a
19 draw against the production of business that I would bring
20 in, and that was for two years, to keep my cash flow stable,
21 as I was starting to build a business.

22 Q And after that two year period, how would you
23 compensated at Neuberger Berman?

24 A Purely on production. So if I hadn't brought in enough
25 business, my income would go down.

1 Q Can you explain to Her Honor how production based
2 compensation worked at Neuberger Berman?

3 A Sure. So you come into Neuberger Berman, you are given
4 no pre-existing clients. As a CPA, I started networking
5 with accountants and lawyers, and the hope was that they
6 would refer clients to me, and I would meet with those
7 clients. I would discuss asset allocation. I would discuss
8 the portfolio management resources of Neuberger Berman. And
9 if I -- if we win the client, if they become a client of
10 Neuberger Berman, they start paying a fee.

11 Everybody who is working with clients at Neuberger,
12 whether you be the money manager or the wealth advisor,
13 receives a portion of that fee.

14 So, for example, if in the first year if I would have,
15 and this is near impossible, but if I would have brought in
16 \$100 million of Ms. Smith, Mr. Jones, and all the varieties
17 thereto --

18 THE COURT: \$100 million of assets under
19 management?

20 THE WITNESS: Correct.

21 THE COURT: Okay.

22 THE WITNESS: And depending on what the asset
23 allocation is because the fee for equity is more than the
24 fee for bonds, but just to make the math easy for us, if the
25 average fee is 1 percent, which is an annual fee, which is

1 calculated quarterly, the fee to Neuberger Berman would be
2 \$1 million on a \$100 million of new business.

3 For the first year, as the wealth advisor, you get
4 a higher profit participation in that, because you won the
5 business. And then in subsequent years, as you service it,
6 it goes down very significantly.

7 So the percentage is 30 percent, so of the \$1
8 million, I would have made \$300,000. And if I would have
9 brought in \$100 million in my first year, I would have made
10 more than my draw, and I would be making the 300,000.

11 In the subsequent year, that \$100 million that's
12 generating 1 percent of revenue goes down to \$100,000, so
13 it's 10 percent versus when you win, 30 percent. However,
14 you are always earning money as long as that client remains
15 a client and is paying a fee, you are always earning money
16 against that revenue.

17 The portfolio manager also participates and shares
18 in that revenue generation. And the portfolio manager
19 makes, there's different rates, but in general, from 25
20 percent to 40 percent for managing the money.

21 So I'm interfacing with the client, I'm bringing
22 the client to Neuberger Berman, I'm having a discussion
23 about their goals and objectives. I am proposing the proper
24 portfolio management solution, and if we win that mandate,
25 as soon as they are fee paying, I'm entitled to a percentage

1 of that.

2 BY MR. KAPLAN:

3 Q And is that -- was that compensation structure
4 consistent at Neuberger Berman from the time you started
5 through the time -- through today?

6 A No, it's evolved.

7 Q Okay.

8 A And it's evolved in a number of different ways. So for
9 those that have built a very significant book of business,
10 their trailer, and there was a point that I was also
11 managing the sales force, so -- let me step back.

12 I was a sales -- I'll call it a sales person. I was a
13 wealth advisor from 1990 to 1998. I brought in a lot of
14 business and I was very successful, and I was the first
15 sales person to be rewarded with a partnership interest.

16 So in 1998, I became a partner. In 1999, my boss, who
17 hired me, went on the executive committee, and then I
18 started running the sales force, the whole biz, you take
19 your best sales person and that they will teach and mentor
20 other wealth advisors.

21 We were also opening offices across the country, and it
22 was my job, in addition to still managing my business, part
23 of my business, it was also my job to help open other
24 offices.

25 When I was managing, I put in a change in the

1 compensation scheme to incentivize people to bring in more
2 money, and I would reward them if they did better than what
3 we expected. We'd have an agreement at the beginning of the
4 year, you should bring in X, and that's how we managed the
5 business. And if they brought in X plus, they were able to
6 increase their trailer from 10 to as much as 12 or 15
7 percent (indiscernible) on 20, depending on the degree of
8 out performance of the accounts that they won.

9 So it was a very entrepreneurial culture. It is
10 described as eat what you kill, and there were incentives to
11 motivate people to really outperform.

12 Today, that is pretty much the construct for manage --
13 for what your participation in your revenue is. And the
14 only difference with me is that for a period I was
15 management, and then I went back to production. And that
16 was part of when we were acquired by Lehman.

17 Q During the time -- jumping ahead for a moment, what was
18 the compensation structure during the time that Neuberger
19 Berman was part of Lehman?

20 A So we had my system, which is 30 percent in the first
21 year, 10, 12, 15 and 20, depending on how you out perform.

22 There was a lot of difficulty and confusion when we
23 were merged with Lehman Brothers, because the compensation
24 scheme for brokers was different than the compensation
25 scheme for asset management professionals.

1 So to kind of explain the difference. So you have a 1
2 percent fee base, you have wealth advisors that have their
3 percentage, you have money managers that have their
4 percentage, and the two together manage the money, interact
5 with the client, win new business, service, roughly equals
6 55 percent, and the house keeps the rest, right, for rent,
7 and et cetera.

8 At Lehman Brothers, they were trying to transform their
9 brokerage sales force from a transactional one to more of an
10 asset management base, that was one of the reasons they
11 acquired Neuberger Berman.

12 And the payout for brokers, since they are wearing the
13 hat of managing the money, and servicing and winning is a
14 higher pay out. It's 40 percent throughout.

15 So if you can imagine how difficult it was to manage a
16 sales force that was more successful in bringing in more
17 assets to the firm but making less money. And the rallying
18 cry of equal work for equal pay surfaced very quickly. So
19 that was part of the challenge in managing the small, I'll
20 call it the David sales force, to the Goliath sales force of
21 Lehman Brothers. There was a -- two different pay schemes.

22 Q But did the formulaic nature of your compensation
23 scheme at -- as a Neuberger employee within the Lehman
24 structure change, or did it remain a formulated structure?

25 A So for me, for my entire 24 years at Neuberger

1 Berman --

2 Q Yeah.

3 A -- there was a period when I also had management
4 responsibilities, and then it changed somewhat then. But I
5 will tell you that -- and maybe this is what I learned from
6 Arthur Andersen, your clients are your strength, and your
7 clients are your power. And so even when I was in
8 management, I still kept a book of business because without
9 it, you have no security.

10 Q Now, you testified a few moments ago that in 1998, you
11 became a partner of Neuberger Berman.

12 A Yes.

13 Q In 1999, Neuberger Berman went -- became a public
14 corporation; is that right?

15 A That's right, that's correct.

16 Q And at that time, did you enter into a stockholder
17 agreement?

18 A I did.

19 Q And did you receive founder shares?

20 A I did.

21 Q Let me show you what has been marked as Neuberger
22 Berman Exhibit C and ask you if you recognize it.

23 MR. KAPLAN: Judge, I have a standalone copy if
24 you'd like.

25 THE COURT: Hold on, I think I -- it's in your

1 book.

2 MR. MILLER: I may have a copy.

3 THE COURT: C? All right. I have it.

4 MR. MILLER: Thank you, we have a copy.

5 (Counsel confer)

6 MR. MILLER: Your Honor, we're going to object to
7 this --

8 THE COURT: I just -- well -- I'm sorry. Go
9 ahead, Mr. Miller.

10 MR. MILLER: This is Ralph Miller for Lehman. I
11 do have an objection to admissibility of this document, but
12 I can reserve that till later, if you --

13 THE COURT: Okay. I just -- you know, we've had a
14 lot of conversation for almost two days now about the
15 schedule and the agreement. I appreciate that it's
16 necessary to lay some foundation and have some background,
17 but we're nowhere near the relevant time period yet in the
18 testimony of this witness, which I -- you know --

19 MR. KAPLAN: I --

20 THE COURT: So we just -- we need to stay focused
21 on the issue that's actually before the Court, all right?

22 THE WITNESS: I recognize this agreement.

23 BY MR. KAPLAN:

24 Q Is that the agreement that you entered in 1999?

25 A Yes.

1 Q And did that agreement contain restrictive covenants in
2 it?

3 A It did.

4 Q And what were the -- as best as you can recall, what
5 were the restrictive covenants of that agreement?

6 A That I could not solicit clients. I believe it also
7 was I could not accept clients. I could not take any
8 confidential information with me. I could not interact with
9 any of the referral sources that I had cultivated over the
10 years, and I was essentially not able to do my job for a
11 period of three years.

12 Q After leaving Neuberger?

13 A If I would have elected to leave, I would not have been
14 able to -- you keep describing it as sitting on a beach, I
15 would have to sit on a beach for three years.

16 Q Okay. Now, following the initial public offering, were
17 employees of Neuberger Berman also given Neuberger Newman
18 stock?

19 A They were. I can speak to the group that I, you know,
20 were working with, they were.

21 Q And were they required to enter into restrictive
22 covenants in connection with that?

23 A They were.

24 Q Now, moving forward to --

25 THE COURT: So can I just clarify? So what you

1 just described was in connection with Neuberger Berman
2 becoming a public company?

3 THE WITNESS: That's correct.

4 THE COURT: And did you or anyone else file any
5 sort of an action or a lawsuit complaining of the imposition
6 of the restricted covenant that you just described at that
7 time?

8 THE WITNESS: No, that's not my nature, but no, I
9 did not, and actually I can -- I can't answer that question,
10 Your Honor, for others.

11 THE COURT: I'm only interested in what you did
12 and your personal knowledge.

13 THE WITNESS: And I answered that.

14 THE COURT: Okay. Go ahead.

15 BY MR. KAPLAN:

16 Q In 2003, there came a time when there was a merger
17 between Lehman Brothers and Neuberger Berman.

18 A Yes.

19 Q And did you enter into any -- did you enter into an
20 amended stockholder's agreement at that time?

21 A Yes.

22 Q And let me show you what's been marked as Neuberger
23 Berman Exhibit D, and ask you if you recognize that.

24 A I do.

25 Q And is that the amended stockholder agreement that was

1 entered into the Lehman/Neuberger Berman merger?

2 A Yes.

3 Q And did that document contain similarly restrictive
4 covenants to the other document --

5 A Yes.

6 Q -- that we spoke about?

7 A Yes.

8 Q And did you also enter at the time of the merger a
9 retention agreement?

10 A I did.

11 Q Let me show you what's been marked as Neuberger Berman
12 H and ask you if you recognize this.

13 A I do.

14 Q And did that retention agreement also contain a
15 restrictive covenant?

16 A It did.

17 Q And was there a reason that you continued your
18 employment at Neuberger Berman, and in the face of the
19 restrictive covenants that you were presented with at the
20 time of the merger?

21 A This was my life's work. This was working with
22 individuals, giving them financial security, helping them
23 buy homes. It had been accumulated and worked along over a
24 long period of time. It very much fulfills me, it's a very
25 important part of who I am, and I love what I do, and at age

1 47 to stop doing it was absolutely not a possibility.

2 Q Well, could you have gone to work someplace else, for
3 example?

4 A If I would have gone to work at a competitor, there
5 would have been a big financial cost to that.

6 THE COURT: If I could interrupt, please. Do you
7 have any understanding of how the merger with Lehman came
8 about? I mean on -- Neuberger Berman was a very successful
9 firm, and it got on the radar screen of Lehman obviously, so
10 then what happened? How did the merger come about, what was
11 the management situation like at Neuberger that led to the
12 merger and by implication of what you're saying, put you
13 into the position that you found yourself in?

14 THE WITNESS: I can't speak to what the management
15 considerations were, because I wasn't part of the executive
16 committee, and I wasn't privy to what was going on. So I
17 learned about it when everybody learned about it. Although
18 I do recall that there were rumors or quite a number of
19 rumors, but I learned about when the press release was
20 released and we got a copy on our desks.

21 THE COURT: So what was the management of
22 Neuberger at that point in time, it was run by an executive
23 committee?

24 THE WITNESS: So it was run by an executive
25 committee, and we had a CEO and a President.

1 THE COURT: And there was no board of directors,
2 the executive committee performed the function of a board of
3 directors?

4 THE WITNESS: So again, I wasn't part of that
5 process of managing the firm.

6 THE COURT: Uh-huh.

7 THE WITNESS: But I imagine since we were a public
8 company that there was a board of directors, of course.

9 THE COURT: I would imagine so, right, okay. All
10 right. Thank you.

11 BY MR. KAPLAN:

12 Q Now, were you aware that other employees of Neuberger
13 Berman also signed retention agreements?

14 A Yes, I am aware of that. I was aware of that.

15 Q You were aware of that?

16 A Yes, sorry.

17 Q And were you aware of that in part because of your
18 being the head of the sales force at that time?

19 A That's correct.

20 Q Now, after the merger did the way that you were paid
21 change from how you were paid at Neuberger?

22 A Yes, it did.

23 Q Can you tell us how it changed?

24 A Sure, sure, as best as I can recall.

25 Since the merger was announced on October 31st, 2003,

1 and it was the end of the year, nothing was really done, in
2 terms of changing our compensation structure.

3 In 2004, we were weaned into the different comp
4 arrangements that they had. And I believe that it was half
5 of what Lehman was doing. And then from 2004 forward, we
6 were fully the same as Lehman employees, differentiated, as
7 you've heard described here by your -- the level that you
8 were, and the amount of compensation that you made.

9 So I think at some point, it was from 50 percent to
10 even more. I think that for some levels, it was as much as
11 65 percent.

12 Q Of the total compensation?

13 A That's correct.

14 Q Was deferred?

15 A That's correct.

16 Q And this was different from the compensation at
17 Neuberger?

18 A Very much so.

19 Q Because?

20 A Because they had these -- I'll call them opportunities,
21 because they were done with the spirit of, you know,
22 employee retention but also safety of the business, but they
23 were significant amounts that were taken from your cash
24 flow, and put aside for future vesting.

25 And in the case of Neuberger Berman since it was five

1 year vesting, we never got any of the monies that were
2 deferred, we never saw any of it. I think we were short by
3 a month for the first possible vesting.

4 Q Because the merger applied in October of 2003, and the
5 bankruptcy occurred in September 2008.

6 A And we started in the program in 2004, so we were never
7 -- we never received a penny. So all of that, all of those
8 years of deferred compensation just completely evaporated.

9 Q Now, what happened with respect to the compensation
10 that was deferred in the year 2008? Do you have any
11 recollection concerning that?

12 A I absolutely do. We got paid dollar-for-dollar of the
13 2008 compensation in 2009.

14 Q And did you receive memoranda from Neuberger management
15 in that regard?

16 A Yes, we did.

17 Q And I show you what has been marked as Neuberger Berman
18 N and O, and ask you if you recognize these documents.

19 THE COURT: Do I have them, Mr. Kaplan?

20 MR. KAPLAN: Those are the highly redacted
21 documents. We looked at them yesterday, but I will give you
22 a copy now.

23 THE COURT: Thank you.

24 BY MR. KAPLAN:

25 Q Do you remember seeing those, of course, not in

1 redacted form --

2 A In Q and A form, yes.

3 Q And that that was Neuberger's management informing you
4 that you would be paid dollar-for-dollar for your deferred
5 comp in 2008?

6 A Yes.

7 Q And at that time --

8 THE COURT: I'm sorry, can you be more specific
9 about where -- which statement are you referring to, Ms.
10 Stiefel?

11 THE WITNESS: This was a document that was given
12 to us that was in Q and A format, and I don't remember
13 exactly the date that we got it when it was put on our
14 desks, but it essentially was trying to help us understand
15 what was going to be the treatment of monies that were taken
16 out of our compensation for 2008, and which ultimately were
17 going to be paid to us in 2009.

18 THE COURT: What was the context of this document?
19 Was this in connection with -- what precipitated this
20 November 17th communication? At this point, you were --
21 Neuberger Berman is owned by Lehman?

22 THE WITNESS: At this point, we are -- we are not
23 -- well Lehman is bankrupt.

24 THE COURT: Lehman -- right, so the filing was in
25 September --

1 THE WITNESS: Neuberger --

2 THE COURT: -- of 2008, right.

3 THE WITNESS: Right. Neuberger was -- is not part
4 of the bankruptcy, we are still in our offices, we are most
5 importantly, still managing client's portfolios, and there
6 was tremendous confusion, and I think this was an attempt by
7 management to give us some clarity about us as an
8 independent -- independent in quotes, not necessarily
9 ownership, entity.

10 BY MR. KAPLAN:

11 Q Did this have anything to do with the subsequent offers
12 of various firms to buy Neuberger from the bankrupt estate?

13 A So I wasn't familiar with those goings on whatsoever,
14 other than what we might be reading in the newspaper. And
15 I'm not sure of the timing of November 2008. Before the
16 bankruptcy, there was an intention to sell Neuberger Berman
17 to Hellman & Freeman & Bayne, and I recall that then became
18 the jurisdiction, if you will, of the bankruptcy process.
19 And the -- in the bankruptcy -- and I'm not a lawyer, but in
20 the bankruptcy process, I think that they were getting in
21 bids from other private equity firms and so we knew, for
22 example, this was known to us, that Carlisle who was going
23 to bring back Jeff Lane as the CEO, he was the former CFO in
24 New Republic, that they were putting in a bid.

25 We were aware of Hellman & Freeman & Bayne because they

1 were spending time in our offices, and I am unfamiliar with
2 what other offers might have been presented to the
3 bankruptcy.

4 Q Going back for a moment, at the time of the merger, did
5 you feel you had a choice as to whether to work -- continue
6 working at Neuberger/Lehman or not?

7 A For me --

8 Q Yes.

9 A -- I did not feel that I had a choice. I had too much
10 to lose. I had worked too long and too hard and had
11 established wonderful relationships, and had a great
12 business. And as I said, it was very fulfilling to me. I
13 was still very young, I loved what I do, and I wanted to
14 continue doing it. It gives me great gratification and
15 satisfaction, and for my clients as well, who really rely on
16 me.

17 MR. KAPLAN: No further questions, Your Honor.

18 THE COURT: All right. Thank you. Mr. Miller.

19 CROSS-EXAMINATION

20 BY MR. MILLER:

21 Q Ms. Stiefel, my name is Ralph Miller, I represent LBHI.
22 We've never met or spoken before; is that right?

23 A That's correct.

24 Q I want to continue with the subject you were just
25 talking about and then maybe we'll work backwards a little

1 bit through this.

2 What ultimately happened with regard to the ownership
3 of Neuberger?

4 A To my surprise and delight, the bankruptcy court
5 approached the management of Neuberger Berman and said that
6 they needed to submit a bid as well.

7 Q And that ultimately led to a so-called management buy-
8 out; is that correct?

9 A We were awarded within the bankruptcy court process, we
10 were awarded that right to buy back the firm from the
11 bankruptcy court -- from the estate, sorry.

12 Q Now, earlier you were asked about Neuberger Berman
13 Exhibits N and O which are this question and answer document
14 that refers to a payment that was promised for 2008 amounts
15 of production that had been earmarked for RSUs. Do you
16 recall that?

17 A I do.

18 Q And you said that the -- you thought that was, if I
19 heard you correctly, an attempt by management to give you
20 some clarity, was that what you said, or certainty?

21 A That's what I remember.

22 Q All right. And was that, do you think in part, to make
23 sure that the stability of the business, and the commitment
24 to clients continued during that period of uncertainty?

25 A That's certainly one reason.

1 Q And that's the same management that ended up doing the
2 buy-out and owning 51 percent of the stock --

3 A That's correct.

4 Q -- correct?

5 And they were making the decisions at that point as you
6 understood it, and not the former management of Lehman that
7 had set up the RSUs program; is that true?

8 A That's correct.

9 Q All right. There was some discussion about your
10 compensation, and I think to help with the Court, if I
11 might.

12 MR. MILLER: May I approach the witness, Your
13 Honor?

14 THE COURT: Yes. So, Ms. Stiefel, how much -- did
15 you receive a payment in January 2009 as this Q and A
16 indicates you would?

17 THE WITNESS: I did. I did.

18 THE COURT: You did. And how much was that
19 payment?

20 THE WITNESS: Upwards of probably pre-tax
21 \$800,000, and after tax about -- I think 450 or something
22 like that.

23 THE COURT: All right. Thank you.

24 MR. MILLER: Your Honor, I've passed out what's
25 been marked Lehman Brothers Exhibit 3, it's the amended

1 Twotso declaration. And this is a -- has attached to the
2 back a page that showed where the ten Neuberger Berman
3 claimants or at least has ten lines for Neuberger Berman
4 claimants without identifying their names, their
5 compensation in various years.

6 BY MR. MILLER:

7 Q And if you look at that, Ms. Stiefel, can you identify
8 without saying which one it is, which line appears to be
9 yours?

10 A I think I can guess.

11 Q All right. Well, I don't think you have to guess, I
12 can confirm. Now, there are two ways we can do this, Ms.
13 Stiefel, and this is up to you and to the Court, by the way,
14 I want to make sure I pronounce it right, is it Stiefel or
15 Stiefel, how do you --

16 A It's Stiefel.

17 Q Stiefel, Ms. Stiefel. One way is we can just talk
18 about the numbers in open court if you don't object to that.
19 The other way to do it is, and this is a little unusual, but
20 I've done it before, you can write the line number, we can
21 put it on a piece of -- a legal pad here, and show it to the
22 Court and the court reporter, and then we'll all talk about
23 it, but then the people -- if any other people have a copy
24 of this, which is publicly filed, they can't tell which line
25 we're talking about.

1 THE COURT: It's not that unusual, Mr. Miller. I
2 just conducted a three-week trial in which there was
3 substantial testimony about someone that we referred to as
4 third party A.

5 MR. MILLER: All right. So --

6 THE COURT: So, in fact, what you can do is that
7 you can and Mr. Kaplan, you can join Mr. Miller, you can
8 actually approach the witness, point to the line, and you
9 can just refer to that and the record will so reflect.

10 MR. MILLER: All right. Well, I want the Court to
11 be able to know which line it is.

12 THE COURT: Yes. And you can let me in on the
13 connection.

14 BY MR. MILLER:

15 Q Would you prefer to do it that way, Ms. Stiefel?

16 A That seems very dramatic.

17 THE COURT: It's not dramatic, it's just designed
18 to protect your -- the confidentiality of your information,
19 which I already have actually elicited from you, so. But --

20 (Counsel and witness confer quietly)

21 MR. MILLER: If I may, the magic number --

22 THE COURT: Very good. Thank you very much.

23 Q It is dramatic and it's kind of fun, so (indiscernible
24 - away from microphone).

25 THE COURT: This is only fun to lawyers who do

1 this for a living, it's not --

2 MR. MILLER: It's probably --

3 THE COURT: It's not at all --

4 MR. MILLER: -- a strange --

5 THE COURT: -- fun for the witness. I was a
6 witness once many years ago, and it's --

7 MR. MILLER: We understand that.

8 THE COURT: -- a very hard situation.

9 MR. MILLER: It is a way to protect, however --

10 THE COURT: Confidential information.

11 MR. MILLER: -- the confidentiality, and we so we
12 certainly want to do that for you.

13 BY MR. MILLER:

14 Q If you looked at your line, and I'm going to try not to
15 ask questions that allow people to derive too much, you'll
16 see that there is what is shown as cash compensation. It's
17 true that none of the lines show any equity deferral for
18 2003, correct?

19 A That's correct.

20 Q If we look at the 2004 line for you, it shows an amount
21 of cash commission, and while it may not be precise to the
22 last two digits, does that seem approximately the cash
23 commission that you received in 2004 before tax?

24 A So it does, but I don't recall that there was no
25 deferral. I thought --

1 Q All right.

2 A -- there was a deferral in 2004.

3 Q Well okay.

4 A So I don't know where this John Twotso document is
5 coming from, but --

6 Q Well --

7 A -- my memory was that we were weaned in, and that it
8 was half of what was the customary in 2004.

9 Q Well -- okay.

10 A And I guess another way to cross-reference it, forgive
11 me because I'm an accountant by background, is if you look
12 on my claim and see if there was a 2004 amount, and that
13 will tell you the validity of this statement.

14 Q All right. Well, I'm really not going to concentrate
15 on that as much, because the purpose is not to establish
16 your claim, but I want to focus on the other parts.

17 A Okay.

18 Q For 2005, there is a number shown for cash commissions,
19 and you think you received that; is that the --

20 A That's the gross number, yes.

21 Q Gross number. And then there is an equity deferral
22 amount, does that appear to be approximately the right
23 relationship and amount?

24 A That's not my memory. I don't remember that number.

25 Q Okay. The cash commission for 2006 looks approximately

1 right?

2 A On the gross basis, yes.

3 Q Do you recall whether the equity deferral looks
4 approximately right or not?

5 A I don't honestly.

6 Q You don't or --

7 A I don't, I do not remember.

8 Q Okay. The cash commission for 2007, does that seem to
9 be approximately what you recall?

10 A No, that looks low.

11 Q All right.

12 A It definitely was lower, but that looks very low.

13 Q All right. And then the cash commission for 2008 and
14 the equity deferral, I think you've testified that you ended
15 up receiving both of those in cash, in fact.

16 A In 2008 I got my deferral back for 2008's deferred
17 comp.

18 Q In 2009 you actually received it.

19 A In 2009.

20 Q Does that --

21 A And that's about close to what I thought it was,
22 it's --

23 Q The combined total appears to be about correct.

24 A Yes, sir. Yes, sir.

25 Q It does appear and I don't want to describe this in a

1 way that is unique, but it does appear that there was a
2 significant increase at least in some of the years while you
3 were working after the Lehman merger in the cash portions
4 that you received; is that correct?

5 A Say that again.

6 Q Yes.

7 A Does it appear --

8 Q If we look at your 2004, 2005 and 2006 numbers, they
9 are significantly larger than the year 2003 cash commission;
10 is that true?

11 A Yes.

12 Q And actually if we look across the line, for example,
13 your 2005 is higher than 2004 also, correct, cash
14 commission?

15 A Correct.

16 Q So it was a success for you to go -- did you consider
17 it successful on balance that you did stay with Neuberger
18 Berman after it merged with Lehman as opposed to trying to
19 break away at the time of the merger and go somewhere else?

20 A May I answer you as follows? The initial idea, as I
21 understand it, of acquiring Neuberger Berman by Lehman
22 Brothers' perspective was they didn't have an asset
23 management, call it manufacturer, and yet, they had an
24 enormous, enormous network, and an enormous power in the
25 marketplace. And the spirit of it was that they would have

1 more opportunities to direct asset management mandates to
2 the wholly owned division of Neuberger Berman, and the
3 numbers bear out that that original spirit was effective and
4 working.

5 Q Okay. I think my question was --

6 A The growth of assets occurred in the initial years when
7 Lehman acquired us. It occurred on the portfolio management
8 side and it occurred throughout the organization. And I
9 think at the time that we were acquired by Lehman Brothers,
10 we maybe had 50 billion -- don't hold me to this, this is
11 just an approximation, \$50 billion. And then when we were
12 part of Lehman Brothers that continued to grow every year in
13 terms of the assets under management.

14 Q All right. Well, I'm not sure my question was clear, I
15 think you did answer it, but let me just focus it.

16 A Sure.

17 Q I was not asking about whether it was a success from
18 the perspective of Neuberger Berman or Lehman, I was asking
19 from your personal perspective. You had a choice to make
20 when the merger with Lehman occurred, and you chose to stay
21 with the merged entity, or actually merger is not exactly a
22 correct term, it was actually a subsidiary I believe all the
23 time, wasn't it, or was it merged into the unity, if you
24 know?

25 A It was -- I think you're right, I think it was a

1 subsidiary.

2 Q All right. So the subsidiary was acquired by Lehman
3 Brothers Holdings, Inc.

4 A A public company was wholly acquired by Lehman
5 Brothers, that's correct.

6 Q All right. So you had to decide whether you wanted to
7 stay after the company was acquired, Neuberger Berman, or
8 whether you wanted to leave --

9 A That's right.

10 Q -- right?

11 Looking back over these first few years, and looking at
12 what you knew then, not what you know now, would you
13 consider it was a personal success for you to stay with
14 Neuberger Berman as opposed to, particularly with your
15 restrictive covenants at that time, going out and trying to
16 find other employment?

17 A I was 44 years old, I loved what I did, and I love my
18 clients, and I was very excited to continue what I do.

19 Q All right. And you understood at that time that one of
20 the changes was that because you were going to go to work
21 for -- what was generally investment bank, was that there
22 would be a deferred component to your compensation
23 potentially at some time. Did you understand that at some
24 point?

25 A Well, we learned it eventually, but I didn't know that

1 on the way in when the announcement was made. I had no idea
2 about that.

3 Q Well, you came to know that when, because it's not
4 clear to me whether you had deferred compensation in 2004 or
5 2005?

6 A So the first year that we were on the program is when I
7 came to know that.

8 Q So was that part of 2003 or was that part of 2004?

9 A I think it was 2004.

10 Q All right. And you said that you made a change around
11 that same time to go back to production.

12 A No, I made a change to go back to pure production in
13 2007, but I was always what we call a player/coach. I was
14 production and also managing. I was doing both.

15 Q Okay.

16 A So I had client responsibilities, and I also had the
17 responsibility of managing the sales force and growing the
18 sales force.

19 Q All right. Now, managing the sales force, that
20 component of your work is not -- doesn't involve direct
21 client contact. It involves making sure that the managers
22 know how to make client contact, the people you're managing,
23 know how to make client contact, and coaching them to go out
24 and actually do the client contact. Is that the way it
25 works primarily?

1 A No, actually no. It -- I was meeting clients all over
2 the country because sometimes they would ask for my, you
3 know, help in a pitch, in a large pitch, so I would go all
4 over the country sometimes.

5 Q All right.

6 A We wore a lot of hats at Neuberger. It was a very lean
7 and mean place.

8 Q All right. Thank you. When did you become aware that
9 some of the compensation that you were -- was shown in your
10 compensation statements was going to be deferred and would
11 go into the equity awards program?

12 A When it was -- when it came into effect, which I
13 believe was in 2004, and we were given materials to that
14 effect.

15 Q All right. And you chose to continue to work there as
16 opposed to go somewhere else at that time; is that true?

17 A I did.

18 THE COURT: Can I interrupt, Mr. Miller. In
19 connection with the acquisition of Neuberger by Lehman, did
20 the Neuberger shareholders receive compensation?

21 (No response)

22 THE COURT: The company was bought, right?

23 THE WITNESS: The answer is no.

24 THE COURT: Neuberger was bought by Lehman.

25 THE WITNESS: That's right.

1 THE COURT: Right? So Neuberger -- but so Lehman
2 paid to acquire Neuberger?

3 THE WITNESS: Right. So it was just --

4 THE COURT: So where did that money go?

5 THE WITNESS: -- an exchange -- the -- if you were
6 a shareholder of Neuberger Berman --

7 THE COURT: Yes.

8 THE WITNESS: -- you got some whatever the
9 translated or calculated amount of Lehman shares were, and I
10 think it was 80 percent in that stock conversion, and I
11 believe, but don't hold me to it, that it was 20 percent in
12 cash. So I have a vague memory of that.

13 THE COURT: So the consideration Lehman paid to
14 acquire Neuberger Berman and the owners of Neuberger Berman,
15 the shareholders, for each of their shares of Neuberger
16 Berman got some combination of cash and stock?

17 THE WITNESS: Primarily stock.

18 THE COURT: Primarily stock of Lehman Brothers.

19 THE WITNESS: That's correct.

20 THE COURT: Okay. And do you recall what you
21 received on a kind of -- you held shares in Neuberger
22 Berman?

23 THE WITNESS: I did, because I was a partner.

24 THE COURT: And do you recall what you received as
25 consideration for the merger?

1 THE WITNESS: I don't, but I could get that.

2 THE COURT: So it was some amount of shares in
3 stock.

4 THE WITNESS: Right.

5 THE COURT: And did you then -- do you recall, did
6 you immediately cash out the Lehman shares, or did you hold
7 them for a period of time?

8 THE WITNESS: We couldn't immediately cash out --

9 THE COURT: Okay.

10 THE WITNESS: -- because there was a restriction,
11 and you could only sell 10 percent per year.

12 THE COURT: I see. Beginning immediately? So it
13 was like a run-off?

14 THE WITNESS: Beginning immediately I think.

15 THE COURT: Okay. Thank you very much. Go ahead,
16 Mr. Miller.

17 THE WITNESS: And by the time -- if this is
18 helpful, by the time that Lehman went bankrupt, we all got
19 stuck with 30 percent. So I think that over that -- that
20 would suggest there were seven opportunities to sell the
21 stock. But none of the claims that are -- we're discussing,
22 Your Honor, has anything to do with that. That's all been
23 lost, and that's not the basis of this --

24 THE COURT: No, I understand.

25 THE WITNESS: Okay.

1 THE COURT: I'm just trying to understand because
2 the claim is being made, the legal theory around the claim
3 that you're asserting, has to do with the circumstances --

4 THE WITNESS: Right.

5 THE COURT: -- among other things, the
6 circumstances of Lehman's acquisition of Neuberger Berman.
7 So I'm just trying to understand since I don't -- I only
8 know what, you know, what gets told to me in this context.
9 So I'm just trying to understand how the transaction took
10 place. I'm sorry, Mr. Miller, go ahead.

11 BY MR. MILLER:

12 Q To follow up on that, did you sell the maximum amount
13 of the Lehman stock that you received, every opportunity
14 that you had to sell it?

15 A Unfortunately I did not.

16 Q So how much without telling us the dollar value or the
17 number of shares, what percentage of the Lehman stock that
18 you received as a part of the merger were you left holding
19 when the music stopped, so to speak, in mid-September 2008?

20 A (Indiscernible) a pretty significant percentage. I
21 don't know what it was, but was probably north of 80
22 percent.

23 Q Okay.

24 A And unfortunately my tax background was part of that
25 decision, which in retrospect was quite foolish, which was

1 -- had a very low cost basis, so whenever I would sell stock
2 it would cost a lot of money in taxes.

3 Q Okay. But it would've been capital gain taxes; is that
4 true?

5 A That's correct.

6 Q I have one more topic. I wanted to talk a little bit
7 about the discussion you had earlier with Mr. Kaplan about
8 going to sit on a beach. And for that, do you still have in
9 front of you Neuberger Berman Exhibit D, which is the
10 amended and restated stockholder's agreement?

11 A I do.

12 Q And this is the document that you had to agree to in
13 order to cash in your Neuberger Berman shares, is that one
14 of the things you got out of this?

15 A I wouldn't describe it as cashing in my Neuberger
16 shares. I would describe it as being awarded my Neuberger
17 shares.

18 Q All right. I'm sorry, that's perhaps a better term.
19 In order to participate in the exchange, and to continue to
20 be a Neuberger Berman -- well, in order to turn in your
21 shares, you had to sign this agreement; is that correct?

22 A That's correct.

23 Q Do you know if you had said I don't want to turn in my
24 shares, but I want to keep on working there, if you could've
25 gotten a different agreement at Neuberger Berman?

1 A I don't believe so.

2 Q Did anyone -- do you know if there was an option for
3 you to say I just forfeit my Neuberger Berman shares, but I
4 want to keep working there, I want to get different terms,
5 you don't know one way or another if that's --

6 A I do not.

7 Q All right. This --

8 THE COURT: Do you know -- one more, one more.

9 And do you know at that moment, and I understand what you
10 said about the clientele that you had built up, so at this
11 moment in time, things are happening, things are moving
12 quickly, there's not a hundred percent nearly transparency
13 in what's going on, right.

14 At this moment in time, do you know if you had
15 done as Mr. Miller suggested, or just said, I don't want to
16 be part of Lehman Brothers, I'm voting with my feet, I'm
17 leaving. Do you know if the restrictive covenants that you
18 were operating under as a Neuberger Berman employee, and
19 that you then had to take with you to Lehman, would they
20 have fallen away because -- and this is kind of fancy lawyer
21 talk because of the change in control?

22 In other words, you had signed up, you were
23 Neuberger Berman, you weren't Lehman Brothers. So --

24 THE WITNESS: Your Honor --

25 THE COURT: -- do you know if --

1 THE WITNESS: -- I'm not a lawyer.

2 THE COURT: And I understand that.

3 THE WITNESS: Right, and I was under the
4 impression that these restrictive covenants still applied.

5 THE COURT: If you had at the moment the --

6 THE WITNESS: If I had voted with my feet.

7 THE COURT: -- mid -- your -- 11:59 a.m. before
8 the merger takes place, you left, and went to another wealth
9 management firm and you wanted to take your book with you,
10 you --

11 THE WITNESS: I couldn't do that.

12 THE COURT: -- believe --

13 THE WITNESS: I couldn't do that.

14 THE COURT: -- you couldn't do that.

15 THE WITNESS: I absolutely positively believe that
16 I couldn't do that.

17 THE COURT: And I don't know the answer, but --
18 and you believe that that the change in control that
19 Neuberger was about to be acquired by Lehman did not have --

20 THE WITNESS: Did not liberate me.

21 THE COURT: -- did not liberate you?

22 THE WITNESS: That's correct.

23 THE COURT: That's what you believed?

24 THE WITNESS: Absolutely a hundred percent.

25 THE COURT: Okay. Thank you.

1 BY MR. MILLER:

2 Q All right. So moving forward a little bit in time, you
3 did sign this agreement, and this was the agreement that was
4 in effect when you became aware of the -- you said in 2004,
5 that some of the compensation was deferred; is that right?

6 A This was the agreement that was in effect, that's
7 correct.

8 Q Yes, the Neuberger Berman D.

9 Now, I do want to ask, did you ever complain about the
10 restrictions that were in the -- this Exhibit D at the time
11 you were asked to sign it, to register written complaints
12 or?

13 A (No audible response)

14 Q No?

15 A No.

16 Q So you didn't file a lawsuit and say you thought that
17 this was something that shouldn't be forced on you?

18 A That's not in my nature.

19 Q All right.

20 A I'm not litigious.

21 Q When you learned that some of your compensation under
22 the Lehman system was going to be deferred, were you aware
23 of the fact that this was consistent with the way Lehman did
24 pay the people who were generally higher levels in the
25 organization, that there was some deferred compensation?

1 A I learned it at that time.

2 Q All right. Did you complain about that and say you
3 didn't know you were getting into this, and you think you
4 were being -- that this was inappropriate or unfair to you?

5 A I wasn't happy about it, but no, I'm not someone -- I
6 keep my noise clean, I work with my clients, and I'm not
7 someone that's very vocal or a nuisance to management.

8 Q All right. Did you go back and look at Exhibit D and
9 try to figure out what are my options at that point, or did
10 you just decide it just wasn't really something that you
11 needed to consider seriously to leave, because there was
12 going to be some deferred compensation?

13 A I didn't consider leaving because there was a cost to
14 leaving that was too great with all due respect from a girl
15 from Que Gardens (ph) and I loved what I did, and I wanted
16 to continue doing it.

17 Q All right. Well, let's talk about that point in time
18 though. In 2004, and this is true of all Neuberger Berman
19 group, at least it was certainly true of you, there was no
20 2003 deferral that you would give up if you'd left in 2004;
21 is that true?

22 A I think that's correct, but I had founder shares.

23 Q All right. So what would you give up if you left other
24 -- in the way of deferred compensation as opposed to the
25 restrictive covenants?

1 A If I would've gone to a competitor, I could've lost my
2 stock.

3 Q All right. If you'd gone to a competitor --

4 A If I would sit on a beach, I would be able to sell 10
5 percent a year.

6 Q Well, let's ask whether you understand that literally
7 means if you'd gone to a competitor, or do you understand
8 that it means if you went to a competitor and did certain
9 things? Do you have that distinction in mind?

10 A So it was my understanding again, I'm not a lawyer,
11 that there was virtually nothing I could do in the industry.

12 Q Let's look at that if we could. Would you turn with me
13 in Exhibit D to the definition of harmful activity, I
14 believe that's what I'm looking for.

15 A What page? Oh, page 4.

16 Q The definition is on page 9 --

17 A Oh, okay.

18 Q -- of harmful activity. Let's start with page 4, as
19 you say. Page 4, I think, is where it says you won't engage
20 in harmful activity.

21 A Okay.

22 Q It -- Article 3 says that there is not going to be any
23 harmful activity, right?

24 A (No audible response)

25 Q And it talks about liquidated damages. Paragraph B at

1 the top of page 5 has a statement, see if you can -- I can
2 read this correctly, "It is expressly understood and agreed
3 that although each principal and the company consider the
4 restrictions contained in the Section 3.1 to be reasonable
5 if a final judicial determination is made by a court of
6 competent jurisdiction, that the time or territory, or any
7 other restriction contained in this agreement is an
8 unenforceable restriction against such principal, the
9 provisions of this agreement shall not be rendered void, but
10 shall be deemed amended to apply as to such maximum time and
11 territory, and to such maximum extent as such court may
12 judicially determine to indicate to be reasonable."

13 A But does that mean you have to go to court? Yes.

14 Q Well, I'm asking you the question, first of all, if I
15 read that correctly.

16 A That's how I read it the same.

17 Q All right. Do you know if anybody at Neuberger Berman
18 ever went to court to try to get a determination of whether
19 these restrictions were reasonable in terms of time or
20 territory or otherwise?

21 A I sincerely don't know if anyone did, it's possible,
22 it's absolutely possible.

23 Q Do you think it's likely from this small organization
24 that someone had gone to court over this issue, and you
25 would not have heard that?

1 A With all due respect it is possible because when
2 somebody leaves, you aren't necessarily in the flow of
3 information about them. So I would not necessarily be aware
4 of litigation against the firm. That isn't something that's
5 widely discussed, so I would not have been in the flow of
6 information about that.

7 And maybe to my detriment, I have a book of business, I
8 have clients, I'm responsive to them 24/7, and that's what I
9 spend my day doing. So if -- it's possible, but it is not
10 outlandish to assume that I wouldn't know about it.

11 Q But certainly you didn't, as you've said earlier.

12 A I didn't.

13 Q So let's -- there are various consequences of harmful
14 activity here, and I -- the Court can read those. Let's go
15 over to the definition of harmful activity which begins on
16 page 9, please.

17 And the subparagraph A talks about soliciting or
18 accepting business from, and then it has a list of
19 categories we're going to talk about in a moment. Do you
20 see that paragraph?

21 A I do.

22 Q And it has to do -- the first little I is "any person
23 who is a client of the company group during the one year
24 period prior to such principal's employment termination
25 date." And it also includes the during the one year period

1 immediately prior to the action.

2 So that clearly applies to the clients of Neuberger
3 Berman; is that true?

4 A Yes.

5 Q Little two I refers to "any prospective client of the
6 company group, who within the one year period prior to such
7 employment termination date had been directly solicited by
8 such principal." Let's just stop there.

9 Do you see the term "directly solicited"?

10 A (No audible response)

11 Q Now, you did directly solicit some perspective clients,
12 right?

13 A I did.

14 Q Some of them became clients, some of them didn't.

15 A That's correct.

16 Q Do you -- would you understand "directly solicited"
17 means you had contacts with them, they weren't somebody that
18 somebody two offices down called on the phone?

19 A That's correct.

20 Q All right. Then or it goes on "where directly,
21 indirectly, in whole or in part, such principal supervised
22 or participated in the company group solicitation activities
23 related to such perspective client."

24 Now, you did supervise or participate in some
25 solicitation activities.

1 A I did.

2 Q Right. Then -- so this is talking about clients of the
3 group and prospective clients of the group so far, right?

4 A Yes.

5 Q The Neuberger Berman group didn't have all the people
6 who needed to have money invested as either clients or
7 perspective clients, did it?

8 A I don't understand what you mean, what's
9 (indiscernible).

10 Q Well, I mean, there's a lot of people in the world --

11 A Sure.

12 Q -- who need to have an investment manager.

13 A Sure.

14 Q So there were a lot of people left over in the big
15 circle --

16 A Okay.

17 Q -- that Neuberger Berman didn't manage to either get as
18 a client or solicit during the one year period, right?

19 A Unfortunately.

20 Q Right. And there would've been some that had been
21 solicited two years ago or three years ago, and they're not
22 in this group, right?

23 A I guess definitionally.

24 Q This is for the one year before you decide to leave.

25 Okay. Then subparagraph B is to solicitor except business

1 engaged in sales or marketing with a financial intermediary

2 --

3 A Yes.

4 Q -- and this talks about who they are, or any person
5 employed with them, with whom the principal had business
6 contact during the one year period prior to such principal's
7 employment termination date.

8 And this is --

9 A This could be an accountant, a lawyer, all of your
10 referral sources.

11 Q All right. So again, this means the people that you
12 had business contact with during a one year period, but this
13 is again, your business contact, not all the business
14 contact of all the people in the office, right? It's the
15 principal?

16 A That's correct.

17 Q Then it gets easier, because C has to do with hiring
18 people, it says you can't go in and employ people. And D
19 has to do with using your record to market, promote, or
20 otherwise trade on your success while you were working at
21 Neuberger Berman, right?

22 A It didn't apply to me, because I wasn't managing money.
23 I was -- right, I was soliciting clients and servicing
24 clients.

25 Q All right. And then C and D are -- I'm sorry, E and F

1 are even easier. E has to do with disclosing confidential
2 information, that's derived here, right? And F has to do
3 with making disparaging or derogatory remarks about the
4 company or the people who work there, right?

5 A (No audible response)

6 Q So the real restriction here, first of all, you could
7 go to a competitor and let's work up from the bottom, you
8 could avoid making disparaging or derogatory comments,
9 right?

10 A Absolutely.

11 Q And you could avoid disclosing confidential
12 information, right?

13 A Well -- but isn't confidential information phone
14 numbers and things of that nature, addresses?

15 Q It may be.

16 A Right.

17 Q But I'm going to come back to that --

18 A Okay.

19 Q -- but you -- once you figure it out what it is, you
20 could avoid disclosing confidential information, right?

21 A (No audible response)

22 Q And then it may not be convenient, but let's say that
23 you went -- who was a big competitor?

24 A Sanford Bernstein.

25 Q Okay. Sanford Bernstein, okay. So let's say that you

1 went to Sanford Bernstein, and you are now a manager, is
2 that what you call yourself, what would you call -- a wealth
3 manager?

4 A A wealth advisor.

5 Q Okay. A wealth advisor. So you're a wealth advisor at
6 Sanford Bernstein, you could, if you went to work there,
7 this paragraph D does not keep you from talking about the
8 success of Sanford Bernstein in managing money, it just
9 means you can't say while I was at Neuberger Berman, here's
10 what we did, right?

11 A That part is correct.

12 Q All right. Now, C you couldn't hire an employee or a
13 consultant, that's okay, you could go to work for Sanford
14 Bernstein and not have to bring anybody with you, right?

15 A So no assistant, no nothing.

16 Q Well, that would be the -- that would be right. It
17 would be just you.

18 A Just me.

19 Q Now it gets a little more complicated. B says that you
20 couldn't solicit business from through or engage in sales
21 activity with the people you had business contact with
22 during the one year period, right?

23 A (No audible response)

24 Q So you'd have to go through your rolodex and figure out
25 who you had contact with over the last year. Everybody that

1 you had contact with 13 months ago or earlier, they'd be
2 fair game, but the people from last year, you couldn't make
3 contact through them for three years, right?

4 A Correct.

5 Q All right. And now let's go back to A. You couldn't
6 solicit or accept business from an existing client from
7 Neuberger Berman, right, or a prospective client that either
8 you directly solicited or you supervised the solicitation
9 of, right?

10 A That's correct.

11 Q That still left a lot of people that were on Sanford
12 Bernstein's list of prospective clients that you'd never
13 heard of before probably?

14 A What list are you referring to, Sanford Bernstein's
15 list?

16 Q You don't think that any competitor is going to have a
17 list of prospective clients that you've never heard of?

18 A Absolutely not, I don't think that.

19 Q That has that --

20 A That's what they're hiring a wealth advisor is to
21 generate that list.

22 Q All right. And your belief is that all the prospective
23 clients in the world were already on your list?

24 A That's a gross exaggeration, of course, because you
25 can't get to all of the prospective clients in the world,

1 but what -- where you build a business is on the basis of
2 your rolodex and your network. And for me, being in public
3 accounting, I was networking with my former Arthur Andersen
4 colleagues. I was networking with matrimonial lawyers. I
5 was networking with trust and estate lawyers, and I was
6 networking with ERISA lawyers, and they are the lifeblood of
7 what we do. Nobody gives you a list, nobody gives you
8 clients, you generate all of them on your own, and they're
9 based on your own contacts.

10 And the reason I was successful is because I had
11 initially believe it or not, even though it doesn't exist
12 anymore, I had the base of Arthur Andersen as a reference to
13 refer clients to me. And I built a business from that, and
14 you know, other related --

15 Q All right.

16 A -- referral sources.

17 THE COURT: Mr. Miller, are we getting towards the
18 end here?

19 MR. MILLER: Yes, we are. Let me just ask a
20 follow-up, a final I guess question on this, Your Honor, I
21 think.

22 BY MR. MILLER:

23 Q Did you make any effort to sit down and consider what
24 practicality you would have in going to a competitor and
25 saying, I can come to work here, but here are the things

1 that I can't do based on what we've been through, but I can
2 go back more than a year, and I can work with all the
3 information that I had more than a year ago, that I built up
4 from Arthur Andersen and people I haven't had business
5 contacts with, and define what you could do? Did you ever
6 go through that exercise in your own mind?

7 A First of all, how do you track it, right? You'd have
8 to go back and research your calendar and, you know, et
9 cetera, et cetera. But in my mind, I was out of business,
10 because I could not solicit and accept clients, I could not
11 network with the intermediaries that I had cultivated, and
12 what typically happens, the way that you continue to build
13 your business is that you are trying to touch them with, you
14 know, different materials so that they think of you, if
15 there is a situation, a life cycle situation where there's
16 an asset management opportunity.

17 So the facts -- I know you believe that if you just
18 eliminated the time period that you would've been, you know,
19 open for business, and you could just continue what you do,
20 but the reality is, you're hoping to continually touch them.
21 You build a database of these referral sources, and you send
22 them a recent article, or you send them something about the
23 markets.

24 So you essentially are out of business because if
25 you're doing your job properly, and how I was successful in

1 building my business is that I'm reaching out and touching
2 them. It's not perfect. The database always has to be, you
3 know, updated and adjusted and sometimes you get busy with
4 client demands, so your best intentions don't necessary get
5 executed in that way.

6 But effectively I believed that I would be out of
7 business because my base of generating a business, I would
8 go from a book of let's say in 2003, it was 700 million to
9 zero. And when you have zero, you are valueless to your
10 competitor, because you can't bring your clients, they're
11 not going to generate revenue. And if you go to a
12 competitor, someone has to pay you. And if they pay you,
13 it's coming from somewhere. And if you're not generating
14 revenue, then you are a lost leader.

15 And maybe you're a nice person and maybe you have a
16 great personality, but effectively it can take five to seven
17 years to build a business. And if you are closed with
18 respect to all the clients that you did this wonderful work
19 for, help them buy houses, help them send their kids to
20 college, and all these wonderful things that you've been
21 responsible for, and if you eliminate that, then you are out
22 of business.

23 Q Your --

24 A You are worthless in the marketplace.

25 Q You're out of business in wealth management, right?

1 A That's correct.

2 Q You said you had a CPA at one time.

3 A Oh, my goodness, that would be a scary thought, because
4 I haven't practiced, at the time, in 14 years, and so the
5 laws change all the time. I would probably be -- what is
6 it, I would be disbarred if you're a lawyer, I would -- that
7 would be a scary thought frankly, Mr. Miller, because --

8 Q Well, I didn't finish my question.

9 A Sorry, I'm sorry.

10 Q My question was, you know that there are a number of
11 large accounting firms that have consulting practices of
12 various kinds.

13 A That's correct.

14 Q Did you consider whether these restrictions would allow
15 you to go to work for an accounting firm, not as an
16 accountant, but to use, for example, your training
17 capabilities, your management capabilities to organize
18 groups and perhaps get them to try to provide say,
19 accounting services to somebody?

20 A And that's worth a million dollars a year?

21 Q That was my follow-up question, thank you. If you'd
22 gone to any large accounting firms, do you think you
23 could've made anything like the kind of income that we see,
24 for example, on the line we've identified before 2005 in
25 cash?

1 A I can't answer that question because I don't what the
2 compensation scheme is for accounting firms. I will tell
3 you that I was a tax person for ten years, I loved doing
4 that, I love giving advice, I loved that people came to me
5 to seek an answer. I loved saving them tax money. But at
6 the end of the day what I loved more was making them money.

7 And the idea of going to be something completely
8 different after I had built a successful business, and had
9 been acknowledged as such by being awarded the partnership,
10 was not something that I felt was viable. I felt what I was
11 excellent at was working with clients and helping them with
12 their financial affairs. And I continue to do that today,
13 and I love what I do.

14 THE COURT: So picking up on that, where do you
15 work now?

16 THE WITNESS: Neuberger Berman.

17 THE COURT: Thank you.

18 MR. MILLER: No further questions, Your honor.

19 THE COURT: All right. Thank you. Mr. Kaplan,
20 any redirect?

21 MR. KAPLAN: No, Your Honor.

22 THE COURT: Okay. Ms. Stiefel, thank you very
23 much. I really appreciate your testimony today.

24 All right. What's next?

25 MR. KAPLAN: Henry Ramallo, Your Honor.

1 THE COURT: All right. Well, what about Ms.
2 Krieger who has been patiently waiting?

3 MR. KAPLAN: Whatever your -- they've been both
4 here. Mr. Ramallo I think will be quick, but if --

5 THE COURT: I really don't want to get in the
6 middle of the management of your witnesses. I can just -- I
7 do have eyes, and I can see that folks have been -- I don't
8 know who have got other priorities elsewhere, so I don't
9 want --

10 MR. KAPLAN: I will --

11 THE COURT: I'm just asking the question.

12 MR. KAPLAN: I will yield to Mr. Schrager and Ms.
13 Krieger, and we will take Mr. Ramallo last.

14 THE COURT: Well, let me ask, if Mr. Ramallo is
15 also a Neuberger Berman employee --

16 MR. KAPLAN: Yes.

17 THE COURT: -- so Mr. Miller and Ms. Krieger, I'll
18 -- we can hear from Ms. Krieger directly in terms of her
19 timing situation, but for that, there would be logic to
20 hearing from the Neuberger Berman employee now because we
21 have that story being evolved. But if Ms. Krieger has to be
22 somewhere else, then I'll -- you know, it's a cost benefit
23 here.

24 MS. KRIEGER: (indiscernible) Your Honor.

25 MR. KAPLAN: She does have to go back to work.

1 THE COURT: Mr. Miller, would you -- can we get
2 Ms. Krieger back to work, would you mind?

3 MR. MILLER: Your Honor, it's the Court's
4 pleasure, we can work with it either way. I think we'll all
5 be able to remember what was just happening --

6 THE COURT: Okay. All right.

7 MR. MILLER: -- in (indiscernible - away from
8 microphone).

9 THE COURT: Then let's have Ms. Krieger come up so
10 that she can go back to work.

11 MR. SCHRAGER: We've done it, Your Honor, but for
12 the record, I'll say I'd like to call Karen Krieger to the
13 stand.

14 THE COURT: All right. Ms. Krieger, would you
15 raise your right hand please?

16 KAREN KRIEGER, WITNESS, SWORN

17 THE COURT: Please have a seat.

18 MR. SCHRAGER: Your Honor, before I start
19 questioning Ms. Krieger, I would like to thank the Court
20 again for its graciousness and --

21 THE COURT: It's my job, no problem.

22 MR. SCHRAGER: -- flexibility with the time
23 period. So one factor that I thought may not be coming out
24 in some of the understandings is that the cross-examination
25 time doesn't count against the presenter of the witness, it

1 counts against the cross-examiner's time, so I think we're
2 both tuned we're well --

3 THE COURT: We are way beyond any --

4 MR. SCHRAGER: -- over three hours at this point.
5 Right.

6 THE COURT: -- time periods whatsoever, so I don't
7 think we need to talk about them anymore, but I would like
8 to be done before 5 o'clock today.

9 MR. SCHRAGER: Great, thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. SCHRAGER:

12 Q Ms. Krieger, can you state your name for the record,
13 please?

14 A Karen Simon Krieger.

15 Q And can you tell me where you were employed at the time
16 of the Lehman bankruptcy, please?

17 A At Lehman Brothers.

18 Q And when did you start work at Lehman Brothers?

19 A November 19th, 1990.

20 Q 1990, okay. What was your position at the time of the
21 bankruptcy?

22 A I ran the business process alignment group within the
23 IT organization, so I was responsible for business analysis
24 around tools, process, and resources, and how they were used
25 in the technology department for enterprise-wide projects.

1 So things like incident problem, change, asset
2 management --

3 THE COURT: I'm sorry, what was that, incident?

4 THE WITNESS: Incident, problem, change.

5 THE COURT: Could you explain what that means?

6 THE WITNESS: So in a technology department, you
7 have many systems that are in production, and you also have
8 systems that are in development. Systems that go into
9 production have problems, and they could go down. So if
10 they go down, we have tools that manage, help incidents in
11 tools are -- that provide transparency to the organization,
12 so that the right people get involved to fix it. So if a
13 training floor application goes down --

14 THE COURT: I see, okay.

15 THE WITNESS: -- the right people need to be
16 notified.

17 THE COURT: Okay. All right. Thank you, thank
18 you.

19 BY MR. SCHRAGER:

20 Q Just for shorthand reference, Ms. Krieger, do you have
21 a title that we can refer to during that -- at the time of -
22 - prior to bankruptcy?

23 A So I was the (indiscernible - attorney speaking over)
24 head of business process alignment and my corporate title, I
25 was promoted at the end of 2007 to SVP, which is senior

1 vice-president.

2 Q Okay. Did you have a number of people reporting to you
3 at that time?

4 A At that time I had a staff of approximately 20 people
5 throughout my years at Lehman, I had varying amounts of
6 people that ranged between a dozen to 50 people at different
7 points.

8 Q Now, you said you started work at Lehman in 1980, you
9 were working at Lehman then when it was spun-off by American
10 Express and became an independent company?

11 A Yes. I was responsible in 1992, 1993 for the
12 technology separation from Shearson, and then the subsequent
13 separation from American Express. And at that point, I
14 built a business office, and that business office was
15 associated to separation of contracts, separation of
16 billing. It was putting in the abilities in Lehman to
17 become an independent organization.

18 So I put in place a process for how we request goods
19 and services, how we receive goods and services into the
20 organization, and how they are deployed. So when PCs came
21 in, when phones came in, any equipment, software that came
22 in, it was my responsibility or my team to actually bring
23 those goods in, inform the people whose job it was to deploy
24 them, so that they would pick them up, and that they then
25 would build the machines, they would deploy them to the

1 user's desks, so that people could be in operational.

2 Q And just for background, Ms. Krieger, how many people
3 did you have reporting to you at that time?

4 A At the time, approximately 35.

5 Q Okay. Now, at that time, you were working out of the
6 Lehman headquarters at the World Financial Center?

7 A I was in the World Financial Center from 1990 until
8 1995, and then I was sent over to 101 Hudson in New Jersey,
9 and then I came back to New York, and again, was in the
10 World Financial Center until the beginning of 2001. And in
11 2001, I was then moved to the World Trade Center, where I
12 was on the fortieth floor.

13 Q Okay. Can you -- this is by way of introduction of
14 your background and skills, Ms. Krieger, and your role in
15 the company. What happened with respect to your
16 responsibilities after the attack on 9/11?

17 A My responsibility was to work on the firm's technology
18 insurance claim. So my job was to try and understand what
19 the value of the assets were that we lost, both in the World
20 Financial Center and the World Trade Center, as well as I
21 was responsible for the capital projects to rebuild the
22 firm, and rebuild the facilities that needed to get set up
23 at 101 Hudson, 70 Hudson, 745 7th Avenue in order to -- so
24 there was a short term, steps that needed to be taken, so
25 that it would be up and operational very quickly after the

1 terrorist attacks. And then it was around building the
2 capital projects to actually facilitate moving into 745 7th
3 Avenue, so that we would have a headquarter building once
4 again.

5 Q That's very helpful, thank you. Ms. Krieger, you've
6 appeared in this court before in this proceeding; is that
7 correct?

8 A Yes. I appeared before Judge Peck in September of 2012
9 when I -- I was a per se claimant, and I was called by
10 someone from Weil Gotshal, his name was Angel, and I don't
11 recall his last name, who asked that I drop my objection to
12 a motion, and I said that I would not.

13 And at that time, he said that if I did not drop my
14 objection, that Judge Peck may ask that I come before the
15 Court. So I came --

16 THE COURT: I just want to -- you know, I want to
17 clarify because -- and I don't want to interfere with your
18 attorney/client relationship, but -- and Mr. Miller hasn't
19 objected to something which is technically what we call a
20 hearsay. You're relating to me what someone said to you,
21 right. And I'm not disbelieving --

22 THE WITNESS: Okay.

23 THE COURT: -- you, but what I'm saying is that
24 without having the speaker of those words here, there's no
25 way for me independently to ask the speaker is that what you

1 said. Okay. And the words that you're using have an
2 implication that there was something improper or there was a
3 threat -- and if you would just let me finish, and I just
4 want to make the observation that it's standard operating
5 procedure and the duty of the attorneys for a party when
6 there's an objection to something ahead of time, the Court
7 wants to know, have you tried to work this out.

8 And so the explanation for what you've just
9 relayed is that prior to a hearing on your objection,
10 counsel has to reach out to the objector and say, if -- you
11 know, are you going to stand on your objection, are you
12 going to come and appear. And generally speaking, Courts,
13 Judge Peck, I can't speak for specifically what he would've
14 done, but if somebody files an objection and they don't
15 appear, it could be that the Court then says, you have to be
16 here, or your objection is going to be overruled.

17 So I just wanted to tell you that I hear what
18 you're saying, and in no way do I not believe what you're
19 saying, but there was implicit in that a characterization,
20 and there's also an element of your relating something that
21 occurred out of my hearing. Okay?

22 THE WITNESS: So I did appear.

23 THE COURT: Okay.

24 THE WITNESS: I came to court and I explained what
25 my claim was about, and that I was going to stand --

1 continue to keep my claim live.

2 THE COURT: Okay. This claim that's here today?

3 THE WITNESS: It was against the -- either the
4 385th or the 329th omnibus objection at the time. And this
5 covered this claim.

6 THE COURT: This claim here? Okay.

7 THE WITNESS: As well as the remainder of the
8 claim that I do have, and Judge Peck said to Mark Bernstein,
9 who was the lawyer from Weil Gotshal because I was
10 representing myself --

11 THE COURT: Yes.

12 THE WITNESS: -- that Weil Gotshal had an
13 obligation to continue to help me through the process.

14 THE COURT: Uh-huh.

15 THE WITNESS: I explained to him that in my 33-
16 year career in financial services, that the Lehman
17 bankruptcy was my third bankruptcy, and that as a result of
18 my ignorance and my inability to handle the legal matters
19 associated to it, clearly I needed some help because I
20 wanted to make sure that I would be able to see my claim
21 through from beginning to end. And that when it was
22 ultimately either approved or denied, I would be still with
23 my claim until a decision was ultimately made.

24 So Mark Bernstein then gave me the number of
25 Denise Alvarez who helped me with some of the conactivity

1 (ph) that --

2 BY MR. SCHRAGER:

3 Q I'm sorry, by conactivity you mean?

4 A Meaning a lot of the documents were being placed in a
5 repository, and I had issues with its access to be able to
6 get through to them. Unfortunately, because of where Weil
7 Gotshal was in the case, Denise very clearly advised me that
8 her ability to advise me from a legal perspective did not
9 exist, so that I was in effect, in a lot of this on my own,
10 and it was only recently that I engaged Richard as my
11 attorney because I felt clearly overwhelmed by the legal
12 documents and whether I was continuing to be on the right
13 track or not. So I was pro se until about three months ago.

14 Q Okay.

15 MR. SCHRAGER: Your Honor, may I approach the
16 witness?

17 THE COURT: Yes.

18 MR. SCHRAGER: I'm going to offer and hand to her
19 CLX007, which has been introduced. It was an attachment to
20 an affidavit --

21 THE COURT: All right. Do you have an extra copy
22 there?

23 MR. SCHRAGER: -- by Mr. (indiscernible - away
24 from microphone).

25 THE COURT: Thank you.

1 BY MR. SCHRAGER:

2 Q Ms. Krieger, under the cover page --

3 THE COURT: Hold on a moment, Mr. Miller is
4 standing.

5 MR. SCHRAGER: I'm sorry.

6 MR. MILLER: We have no objection, Your Honor, to
7 this being discussed and there are some parts of it that we
8 might object to later, but for now, it's -- we have no
9 objection to the usage.

10 THE COURT: Okay. All right.

11 BY MR. SCHRAGER:

12 Q Okay. Ms. Krieger, if you could take a look at your
13 cover page which is -- the first page of your letter which
14 is under the cover page. That is a letter from you
15 addressed to James M. Peck and Robert J. Lemons of Weil
16 Gotshal dated March 29, 2013.

17 A That's correct.

18 Q And this letter was drafted by you?

19 A That's correct.

20 Q Okay. So -- and that is your signature on page 11?

21 A That is correct.

22 Q Okay. And that was before you retained my firm --

23 A That's correct.

24 Q -- as your counsel. Okay.

25 And there were some exhibits with that letter that are

1 not attached here; is that correct?

2 A Yes. They are referenced in this document, and in
3 fact, the entire package was sent to Judge Peck, as well as
4 Robert Lemons and Mark Bernstein with all of the attachment,
5 there were 23 exhibits.

6 Q Could you give a rough idea of the total number of
7 pages in the compilation?

8 A Probably 150.

9 Q Okay. When you were still pro se, Ms. Krieger, you
10 knew about this hearing? You knew that an evidentiary
11 hearing was planned, correct?

12 A As far as I could tell from the documents, I think that
13 there was some back and forth as to whether or not one would
14 happen. And --

15 Q Would it have been your intention to testify when it
16 had happened?

17 A Absolutely.

18 Q You would've testified --

19 A Absolutely.

20 Q -- on a pro se basis?

21 A Absolutely.

22 Q Is that correct?

23 A Yes.

24 Q Thank you. I'm going to pose some questions, Ms.
25 Krieger, about the structure of the RSU program. Do you

1 recall when you first got RSUs?

2 A 1994.

3 Q 1994. And was that the beginning of the program?

4 A Yes, it was.

5 Q Did you elect to take RSUs?

6 A Absolutely not. I very consciously felt that it was a
7 bad decision based upon the two bankruptcies that I had gone
8 through previously, that I ever have my income and my
9 investment stream in the same place, so I very deliberately
10 ensured that whatever I could have elsewhere, I would.

11 Q Okay. Now, in the context that we discussed earlier
12 with your responsibilities at that time, did you have people
13 reporting to you when the RSU program was initiated?

14 A Yes.

15 Q Was it your responsibility to communicate with any of
16 them about the RSU program?

17 A At the very beginning of the program, it was our
18 responsibility to provide an overview of what the program
19 would be. We were given training sessions by HR, as to --

20 Q HR is?

21 A I'm sorry, human resources, as to how to explain what
22 that program meant, and then subsequently each year, as
23 compensation was ready to be announced, we had training
24 sessions again with the HR department that required us to
25 ensure we understand the script that we needed to deliver to

1 our employees so that they would understand their
2 compensation.

3 Q Okay. When you were first awarded RSUs, did you have
4 any choice about the number, the percentage of your bonus
5 that would be allocated RSUs or the vesting period or any of
6 the other features of the RSU award?

7 A No.

8 Q When you communicated to your -- report -- the persons
9 reporting to you, did any of them question whether any of
10 these options were available?

11 A You know, initially there were questions about how it
12 would work, and what it would mean to them, but the firm
13 very clearly marketed it as this was a new program that was
14 being implemented, and it was not up for discussion in terms
15 of people's options.

16 Q Okay. In here, in your experience at Lehman at the
17 time of the commencement of the program, did you have an
18 understanding of what the purpose of the RSU program was?

19 A So I think it was two-fold. When they started in 1994,
20 we had just completed the separation from Shearson and from
21 American Express.

22 Lehman Brothers had a huge hurdle in front of them in
23 terms of building an infrastructure that would require them
24 to be independent. So it was very clearly explained to us
25 that in order to remain a viable organization, they needed

1 to present comp ratios that said that the compensation ratio
2 must remain within the 49 to 51 percent, and these were
3 thing that came from the top down when --

4 Q If I can interrupt you there a moment, Ms. Krieger.

5 Let's be sure we understand that. We've referred to a
6 compensation ratio. That is the ratio of the compensation
7 and benefits to employees over some other number. What
8 would that -- what would the ratio be between what two
9 figures?

10 A Total -- it was a ratio of compensation as a
11 relationship to the rest of the expenses of the firm.

12 Q Okay. And -- thank you.

13 Where was the source of your understanding -- sorry.
14 What was the compensation ratio that you understood the firm
15 to have as its goal?

16 A So in 1994, I was chartered with managing the
17 technology expense which included telecom, networking,
18 hardware, software, and professional services.

19 So as a result of being part of these committees that
20 were to gain the transparency around the spend of the firm,
21 they talked to us about how to drive spend out of the
22 organization. And --

23 Q I'm sorry, how to drive --

24 A Spend --

25 Q How to reduce expenses.

1 A How to reduce expenses by looking for --

2 Q Thank you.

3 A -- demand reduction, renegotiation of contracts,
4 whatever was potentially plausible to help reduce the
5 expenses of the firm.

6 So with that, there was a financial component, and the
7 message from our finance organization which gave us goals as
8 to what we needed to hit, told us what was important in
9 terms of the transparency to the rating agencies that the
10 compensation ratio needed to remain between 49 and 51
11 percent.

12 Q 49 and 51 percent, okay.

13 A Yes.

14 Q Thank you. Do you have any understanding of what the
15 compensation ratio would've been if the RSUs had been
16 included in the compensation?

17 A Considerably higher.

18 Q Uh-huh.

19 MR. MILLER: Excuse me, Your Honor, I just want to
20 object to lack of foundation, that the answer is probably
21 vague and so I don't know if (indiscernible - away from
22 microphone).

23 THE COURT: Okay.

24 THE WITNESS: I will say also that Dick Fold (ph)
25 and Dave Goldfarb (ph) and Joe Gregory also, in our

1 quarterly reviews of the firm's earnings, they would have
2 quarterly conference calls where the entire firm would
3 listen to them providing an update. And then there were
4 also additional meetings that they called where some of the
5 more senior people would go into an auditorium, and they
6 would provide us that.

7 And as part of the statement around earnings, and
8 how the firm was doing, they also would provide us around
9 transparency around the compensation ratio and where they
10 were in terms of it, and the importance of keeping that
11 aligned to the 49 to 51 percent ratio.

12 BY MR. SCHRAGER:

13 Q Okay. Let me ask you this, you said you were promoted
14 to SVP, senior vice-president in 2007, correct?

15 A Correct.

16 Q In your capacity as SVP, did you go to any of those
17 meetings that you just discussed?

18 A I went to some of those meetings then, and I did
19 previously as well, because my role when I had
20 responsibility was the CAO, who worked for the CIO of the
21 organization.

22 So I had responsibilities --

23 Q So that's the chief administrative officer for the
24 chief information officer --

25 A Chief information -- chief administrative officer to

1 the chief information officer. So I --

2 Q CAO for the CIO, thank you.

3 A That's right. I was responsible for the day-to-day
4 operations of the IT organization.

5 Q Right. And then --

6 MR. SCHRAGER: Well, Your Honor, I think that
7 addresses the foundation objection that Mr. Miller was going
8 to make.

9 THE COURT: All right. Well --

10 MR. SCHRAGER: And I would --

11 THE COURT: -- let's keep going. I'm --

12 BY MR. SCHRAGER:

13 Q I'm going to pose the question again, Ms. Krieger, do
14 you have any idea what the comp ratio would've been, this
15 goal of 49 to 51 percent, what the (indiscernible) would
16 have been had the RSUs been included in the comp ratio?

17 A Significantly higher. I mean, you know, I had done a
18 calculation based on my looking at the balance sheet, and it
19 appeared to me that it would've approached the 60 percent
20 mark.

21 Q Was the RSU program something --

22 MR. MILLER: Again, Your Honor, I do object to
23 that as without foundation and move to strike.

24 THE COURT: Okay. Let's keep going. All right.

25 MR. SCHRAGER: Okay.

1 BY MR. SCHRAGER:

2 Q Ms. Krieger, was the RSU program when announced, was it
3 something that was attractive to you as an employee?

4 A It was not.

5 Q Can you explain to us why?

6 A I felt that as an employee of the firm that I operated
7 day-in/day-out like an owner. I treated the firm's money
8 like it was my own bank book. I was prudent about any
9 decisions that I had to make with regard to how the firm
10 invested.

11 I unfortunately felt that when they instituted this
12 program, that I was going to be handcuffed, handcuffed in
13 the prospective that I did not want anybody managing my
14 money. I want -- I will tell you that in 1996,
15 unfortunately, my husband passed away, and Lehman Brothers
16 hired on my behalf somebody to help me figure out how to get
17 my financial life in order.

18 They worked with me to ensure that financially I was in
19 an okay position, in terms of raising my children who were
20 very young at the time. They helped me get a financial
21 advisor. They gave me an exception to the process that I
22 had, because the firm mandated that all purchases of stock
23 needed to go through them as an organization. I raised an
24 objection and said to them, if you tell me I have to go to
25 somebody at Lehman Brothers to make my investment decisions,

1 I will not be focused on my job. I will be focused on,
2 because the people at Lehman Brothers were order takers at
3 the time. It was a retail organization. And you would pick
4 up the phone and say, please buy me 50 shares of AT&T. I
5 had a job to do during the day. I certainly couldn't figure
6 out the best way to invest my money if I wasn't going to
7 focus on the stock market and to figure out when I needed to
8 buy bonds.

9 Lehman Brothers came back to me and said, we've hired
10 somebody to help you figure out your personal set of
11 circumstances, like when I needed to -- how I needed to
12 assess the value of my home, how I needed to do things to
13 get me in place as a young widow, and then they also said
14 they would give me exception. And they said to me, you can
15 hire an external financial advisor as long as you have every
16 confirmation, for every trade you do, sent to your manager,
17 as well as the compliance department, which I immediately
18 complied with.

19 Q Okay. I'm going to ask two quick questions here. A
20 few moments ago, Ms. Krieger, you used the term owner, that
21 you felt like an owner of the business. Was that before or
22 after the RSU program was put into place?

23 A I am a child of immigrants. My parents raised me that
24 the most important thing in the world was to be able to take
25 care of yourself. So I treated my home life and my work

1 life exact same way.

2 If the firm gave me a responsibility for a budget,
3 whatever it is, my job was to oversee it, to make sure it
4 was spent prudently, to make sure any time Lehman Brothers
5 in the technology department had an audit issue that needed
6 to get resolved, they came to me to oversee it, because they
7 knew I treated the firm like it was my own. I was
8 financially and fiscally responsible to the enth degree.

9 Q So as a financial and fiscally responsible employee, it
10 was not the RSU program that made you feel like an owner?

11 MR. MILLER: Objection, leading.

12 THE COURT: Sustained.

13 BY MR. SCHRAGER:

14 Q Was it the RSU program, Ms. Krieger, that made you feel
15 like an owner?

16 A No, because it handcuffed my ability, because the
17 decisions around my money were going to be managed by
18 somebody where I had no control of.

19 Q Okay.

20 A And having lost the money at Drexel Berman and having
21 lost it at federal government securities, I vowed I would
22 never go through this again.

23 Q Now, let me ask a little more about the --

24 THE COURT: So can I interrupt --

25 MR. SCHRAGER: Sorry.

1 THE COURT: -- so could I ask you a question?

2 THE WITNESS: Uh-huh.

3 THE COURT: So when the RSU program began, and you
4 wisely didn't want to be part of it, but you stayed at
5 Lehman, right? And I can imagine why you decided to stay.

6 But was it difficult for you to -- and you
7 remained a loyal employee, and you went through these
8 terrible things, terrible things, was it difficult for you
9 to feeling the way that you did towards the firm, the firm
10 was part of your family, right, and yet they were imposing
11 this condition of employment on you, that you recognized as
12 entailing risk, and putting yourself at risk. So how -- I'm
13 just trying to understand how you felt about that, since you
14 -- when you went to work in the morning, and I feel the same
15 way about my job, that you know, it's that important, it's
16 not just something that you do from 9 to 5.

17 So how did you process that dissonance in your
18 mind of that condition of your employment, and yet you felt
19 that it was putting your financial security at risk because
20 part of your wealth was now tied up with the RSUs?

21 THE WITNESS: Frankly, I was petrified. But I
22 also was in survival mode. I -- you know, between what
23 transpired in my personal life, what transpired on 9/11, and
24 being in the building, and the potential of leaving my kids
25 as orphans, the fact that several other people in my -- my

1 whole network of people around me, I lost my dad, my in-laws
2 all at the same time, I had nobody to turn to.

3 The only people in my life at the time were my
4 kids and my friends at work. I drowned myself in the
5 office, in order to survive. However, every year that those
6 RSUs became viable to sell on day one, I sold them. The
7 only year I did not sell them was December -- was the 2007,
8 and the reason I did not sell them is, at the time, I had
9 one daughter who was on the verge of graduating from
10 college, and a second daughter who was starting, and I was
11 slightly financially ahead of myself, and I said, I'm going
12 to sell those in September of '08 when my younger daughter
13 starts college. Because I -- and what happened
14 unfortunately is because I lost those RSUs, Barclays brought
15 me over and kept me there employed, and I stayed there until
16 2011.

17 I had to live on one paycheck a month in order to
18 get my second daughter through college because I did not
19 have the funds to pay for her, and I swore that when both of
20 my kids were going to get out of college without a loan, so
21 I lived on one check until -- and those RSUs would've made
22 the difference in my life while she -- but now they're both
23 out of school, and I'm in a different situation, and have
24 left the industry.

25 But for me, it was a nightmare. My financial

1 advisor agreed with me, but my hands were tied, and I
2 couldn't -- the thought of leaving the firm, I would've been
3 emotionally destroyed.

4 BY MR. SCHRAGER:

5 Q I'd like to come back to that personal financial
6 advisor. You said that that was something unusual for
7 Lehman to do, that was not the normal policy; is that
8 correct?

9 A No.

10 Q And why do you think that exception was made in your
11 case?

12 A They understood my ethic, they under --

13 Q They meaning --

14 A They meaning --

15 Q -- (indiscernible).

16 A -- (indiscernible - talking over each other)

17 compliance, I had to talk to the head of the IT department,
18 and I said to them, you can have whatever transparency you
19 want, I need somebody who is going to step aside, look at my
20 stuff in terms of how to take care of me, and how to take
21 care of my kids, and whatever they decide, I will feel I can
22 focus on my job, I can focus on raising of my children, and
23 the rest of it is their problem, and you can see what you
24 need to see.

25 Q And you refer to compliance and your own IT department,

1 so you were discussing this situation with people outside
2 your normal chain of command at Lehman Brothers?

3 A That's correct.

4 Q What was your personal feeling about the help you got?
5 Did it inspire you?

6 A I was forever indebted to the fact that I needed to
7 take clear -- I mean, my children were 5 and 10. I needed
8 to take time after work to get them through the grieving
9 process. Lehman was incredibly supportive of my situation.
10 I mean, they knew it was coming, my husband was sick for
11 several years. But they went out, above and beyond to help
12 me get my life back where I needed to be in order to
13 continue working and raise my children.

14 Q Okay. I'd like you to concur, Ms. Krieger, your fear
15 about Lehman that you've just described, with your feeling
16 about the RSU program. Obviously they're not consistent,
17 can you explain to the Court how you reconcile them?

18 A The choice was leave Lehman and leave the comfort of
19 what, in fact, was my family, and I realized that I was in
20 no position to go to another firm and try to establish my
21 credibility and to try and work and build a new future.
22 Because at that point, I cared about day-to-day living with
23 my kids, and making sure they had the right caregiver when I
24 went to work. And it was very tough because working at
25 Lehman, I worked on average 15 to 18 hours a day. My kids

1 did not see me night after night, I had somebody living in
2 the house with me because -- and sadly, it was -- a lot of
3 it was to deal with my grief because I was comfortable
4 there, but the thought of going anywhere was beyond
5 frightening to me.

6 You know, to say that I was going to leave because of
7 the RSU program, I couldn't bear to leave people who were
8 being so supportive.

9 Q Thank you. Now, Ms. Krieger, I'd like to read a
10 sentence into the record from page 2 of your letter. This
11 is on page 2, the third paragraph from the bottom.

12 "Why I most certainly thought and acted like an owner
13 during my 18 years at Lehman every day, the management
14 decision to establish the program, the RSU program
15 handcuffed my ability to manage my RSU investments, as I
16 have managed my other investments."

17 Are those your words?

18 A Yes, they are.

19 Q That's in your letter?

20 A Yes.

21 Q Thank you. What did you mean about managing your other
22 investments? What investment -- could you describe the
23 approach you took to managing your other investments?

24 A I hired a financial advisor, who was at a small firm,
25 and he's managed my money since 1997.

1 Q Okay. Have you ever discussed the RSUs with him?

2 A At the time.

3 Q We won't ask for his views, but what was your
4 understanding of a proper approach to investments in Lehman
5 at that time?

6 THE COURT: I don't think I understand that
7 question.

8 Q As a result of your conferring with your personal
9 financial advisor about the RSU program, did you reach any
10 conclusions yourself about the program and what should be
11 done with the Lehman shares that you received?

12 A The Lehman shares that I ultimately received, it was
13 agreed that every year, on the first of December, they were
14 sold.

15 Q Okay. Thank you. I want to read another sentence to
16 you, Ms. Krieger, and this is a statement from the Lehman
17 Brothers' brief in this hearing. You have seen the briefs
18 that Lehman Brothers submitted to the Court, correct?

19 A Yes.

20 Q The sentence is, "RSUs gave employees a direct stake in
21 the company and motivated them to play a significant role in
22 the success or failure of Lehman Brothers." This is the
23 Lehman -- the opening brief at page 17 for the record.

24 Do you recall reading that? Do you think it's true?

25 You have to talk I'm afraid.

1 A Sorry, no, I did not.

2 Q Okay. Do you recall the source given in the brief for
3 that statement?

4 A The first sentence in the paragraph you read, they
5 quoted me, and only took everything before the apostrophe,
6 and included, and said, while I most certainly thought and
7 acted like an owner during my 18 years at Lehman Brothers
8 every day, so they took the half of my sentence and said,
9 see, here's somebody who felt that way.

10 Q What was your reaction when you read that?

11 A I called furious, I called you and I said, how can they
12 do this. It's not what I said.

13 Q Okay. Once again, just to be sure it's clear, you
14 refer in that sentence that you just read and that was
15 quoted, you thought and acted like an owner during your 18
16 years at Lehman, that thinking and feeling and acting like
17 an owner pre-dated the RSU owner, correct?

18 A It has been with me since I started my career in 1978.

19 Q So your use of the term owner in that letter had
20 nothing to do with the RSU program.

21 A No, absolutely not.

22 THE COURT: Ms. Krieger, you -- the RSU program
23 was a firm-wide program at Lehman Brothers, right?

24 THE WITNESS: That's correct.

25 THE COURT: And based on your description, you've

1 made it very clear that you had a very particular and
2 exceptional work ethic and attitude toward any firm that you
3 worked at.

4 THE WITNESS: That's correct.

5 THE COURT: And certainly possible, and probable,
6 that there were many hundreds, if not thousands of employees
7 at Lehman Brothers who didn't approach their job the way you
8 did, right?

9 THE WITNESS: That's correct.

10 THE COURT: Right. And it's possible that
11 notwithstanding the fact that the attorneys, as attorneys
12 will do sometimes unfortunately quote you out of context,
13 they quote me out of context too, that the program which
14 said in all of the glossy materials, we want to incentivize
15 you to act as an owner, that particularly among the younger
16 generation of employees, that they would respond to that
17 stock incentive because as we know, there was some boom,
18 boom years where that stock price was --

19 THE WITNESS: Yes.

20 THE COURT: -- climbing up. Right?

21 THE WITNESS: Yes.

22 THE COURT: So that it's possible that, you know,
23 if Lehman could think, and corporations don't think except
24 through the people who run them, that Lehman thought that
25 they could get people to work 18 hours a day like you did

1 naturally, and like I do naturally, that they could get some
2 of those people to work harder and produce, and produce, and
3 produce so that they could get those RSUs and ride that
4 price up and become rich, right?

5 THE WITNESS: I would've left it on the table.

6 THE COURT: I hear you.

7 THE WITNESS: No interest.

8 THE COURT: Okay. All right. Are we almost done
9 because I think Ms. Krieger's been up here a pretty long
10 time?

11 MR. SCHRAGER: Okay. Just a few -- I would say,
12 Your Honor, I've got another half an hour, but I'm not going
13 to need it.

14 THE COURT: I'm not -- okay.

15 MR. SCHRAGER: I would like a half an hour.

16 THE COURT: You know, I just --

17 MR. SCHRAGER: But I don't think it's --

18 THE COURT: -- and I'm going to say this --

19 MR. SCHRAGER: -- going to happen.

20 THE COURT: -- and --

21 MR. SCHRAGER: Yeah.

22 THE COURT: -- I'm going to say this for --
23 largely for Ms. Krieger's benefit, okay --

24 MR. SCHRAGER: Yes.

25 THE COURT: -- there was a negotiated game plan

1 and the game plan involved three hours total. So it's very
2 important to me that everyone have a full opportunity to be
3 heard, but I do want continue to remind the claimants'
4 attorneys that -- and you took ownership of this
5 stipulation, you told me yesterday you negotiated it, and
6 now we have a situation where you're about to take up an
7 hour of what was supposed to have only been three hours.

8 So I'm just going to ask you to look at your
9 outline and try to figure out, you know, the -- what you
10 really need to cover, and what you might just not cover.

11 MR. SCHRAGER: Yes, Your Honor, thank you for
12 the --

13 THE COURT: All right. And, Ms. Krieger, I will
14 say it over Mr. Miller's anticipated objection, if there's
15 something that you want to say, all right, not in response
16 to a specific question, you should just say it. All right.
17 If when we get to the end, there hasn't been a full
18 opportunity for you to say what you want to say, you can say
19 it, but Mr. Miller does have the right to cross-examine you
20 on it. All right?

21 THE WITNESS: Thank you.

22 THE COURT: All right. Let's keep going.

23 BY MR. SCHRAGER:

24 Q Just a few more questions, Ms. Krieger. Let's pick
25 2007 as just the year before the bankruptcy. At that point,

1 you're a senior vice-president of Lehman, correct?

2 A Yes.

3 Q And how many people in a given year would you sit down
4 and discuss the RSU program with?

5 A It ranged, depending upon --

6 Q I'm sorry, let me withdraw --

7 A -- the people at the time --

8 Q -- that question and be more specific.

9 How many people reported to you, would you sit down and
10 discuss their bonus with, including the RSU group that was
11 part of the bonus?

12 A At that time, it was probably somewhere between 12 and
13 15 at the end of 2007.

14 Q Okay. And just so we have it clear, and it's nothing
15 we're hiding from, but do you think, in your discussions
16 with those people, that the RSU program may them act and
17 feel like owners of the business?

18 A I made them feel like owners of the business every day
19 in the way I managed my team.

20 Q Okay. When the program was first announced, the RSU
21 program and based on the first announcement and the meetings
22 that you sat in that you described earlier, do you know of
23 any benefit that the RSU program provided to Lehman?

24 A It provided -- because it was really a retention of
25 cash, it provided working capital to an organization that

1 was in its infancy when it started in 1994. It needed
2 funding for all the capital changes that were required to
3 build an infrastructure to become separate from Shearson, to
4 become separate from American Express, to rebuild after
5 9/11, to invest in the things that needed to be invested in,
6 in order to become a mature organization.

7 We had dependencies on all of those other firms for
8 years, phone system, data center, networks, you name it, it
9 was all combined together. And it required huge investments
10 of capital.

11 And so what this was provided working capital with the
12 hope that five years later, the firm would have the actual
13 revenue, increases, in order to then pay back its employees.
14 It also provided them an ability to retain employees, if
15 they did not pay these kinds of bases and bonuses, people
16 would've gone elsewhere. So they were trying to retain
17 talent, they were trying to build the firm, and then
18 ultimately pay back the employees with the dollars converted
19 to equity at the time.

20 Q Okay. So in addition to the effect on the compensation
21 issue we discussed earlier, it enabled Lehman to declare a
22 bonus, and yet keep the cash that had been declared as a
23 bonus.

24 A That's correct, and keep in line with the rating
25 agencies, and the fact that they were considered financially

1 stable organization and give them the rating that they
2 required in order to borrow money at the competitive rates.

3 Q If I can quote your letter, Ms. Krieger, you said it
4 was (indiscernible) shoot maneuver, I'm quoting here, a
5 (indiscernible) shoot maneuver required to impress the
6 credit agencies, the investment community, and the
7 regulators. Those were your words.

8 A Yes.

9 Q And now what do you base your analysis there?

10 A I was responsible for the technology budget of the
11 firm. At the time that I worked for the CIO, I was managing
12 a budget of \$350 million. And so all of the firm, anybody
13 who had that responsibility, we had to go to budget meetings
14 from the finance organization, who would tell us the
15 parameters that we needed to operate in.

16 So that information was provided to us in terms of how
17 to build our budgets.

18 Q Okay. And, Ms. Krieger --

19 MR. SCHRAGER: My final couple of questions, Your
20 Honor, would be this.

21 Q -- that we've had some discussion over the last couple
22 of days on some awards of RSUs and some compensation figures
23 that have been taken into consideration and have been
24 discussed by the Court and by counsel.

25 Can you give us some idea of what your annual salary

1 was at Lehman?

2 A I started out at Lehman Brothers in 1990 as a VP, just
3 having come out of the Drexel bankruptcy, I was a VP and I
4 was making \$65,000 a year.

5 In 2007, when I was promoted to SVP, my base salary was
6 \$175,000, and my bonus was \$270,000. Of that \$270,000,
7 \$45,000 was taken out for RSUs.

8 Q \$45,000 taken out in 2007?

9 A That's correct.

10 Q Okay. And your total claim for RSUs pending in this
11 proceeding now, do you recall that number?

12 A \$164,000.

13 Q Okay. Let me follow-up on the Court's invitation, Ms.
14 Krieger, is there anything else that you would like to add?

15 A I would. There is one thing which is about the fine
16 print from Lehman. In the years 1994 to 2001, we got
17 packages from the organization that talked about the
18 program. Inside that there was a single sheet that was on
19 four sides and that provided a lot of the fine print. What
20 I found is that when the firm made changes to the RSU
21 program throughout the years, they only talked about certain
22 things. They talked about a separate distribution in 2001
23 right after 9/11. They made one in September and one in
24 December.

25 In July of 2008 they issued a special RSU

1 distribution which was the hope of -- I think they must have
2 realized they had some financial issues and they were trying
3 to pay some of the bonus money up front, but when it came
4 down to it, all of the fine print that changed year on year,
5 there was never any transparency provided.

6 So, in fact, the whole notion about bankruptcy in
7 these documents, year on year changed. If you look in one
8 of the earlier years it talks about that a bankruptcy
9 occurs, Lehman is required to take the RSUs and distribute
10 them to us on the vesting date so that we can actually trade
11 them on the market. We never saw anything in 2008, '09,
12 '10, '11, or '12, that they actually sent those converted
13 RSUs equivalent to shares back to us. So, in fact, I feel
14 that they didn't really think they were equity because they
15 didn't distribute them. They didn't give me the opportunity
16 to sell my RSUs that were converted to shares at sixteen
17 cents on the share if that's what they were trading at.

18 So I've been sitting all these years with my
19 ultimate claim which is \$225,000 not being able to put it
20 down as a tax loss, not start anything waiting for this to
21 happen, but I honestly think there was no transparency
22 around the fine print and they changed the terms year on
23 year, but none of that was communicated to the employees of
24 the organization. And unless you sat with document from
25 year one to document year two to document year three and try

1 to compare the fine print, you never would have known. And
2 it was only when I started to write this document because I
3 have all of the documents in a box at home from 1994 when
4 the program began and I looked and I said they changed the
5 fine print on these terms and no one ever knew about it.
6 There was no transparency.

7 THE COURT: Okay, all right.

8 MR. SCHAGER: Thank you, Your Honor.

9 I would note that Ms. Krieger, as other claimants
10 have, submitted a declaration and there is more ground
11 covered in her declaration and I don't think her testimony
12 today was duplicative of it.

13 THE COURT: Okay, thank you.

14 MR. SCHAGER: But thank you again, for your
15 patience.

16 Thank you, Ms. Krieger.

17 THE COURT: Mr. Miller?

18 MR. MILLER: Ralph Miller with LBHI. We'll try to
19 be brief, Your Honor.

20 THE COURT: Okay.

21 MR. MILLER: And, Ms. Krieger, I'll try to be as
22 short as I can.

23 CROSS-EXAMINATION

24 BY MR. MILLER:

25 Q I want to begin with the issue of the quotation from

1 your letter, and I want to start by apologizing if you feel
2 that this was done out of context.

3 Do you have CLX-007 in front of you?

4 A Yes, I do.

5 Q I'd like to direct your attention to the paragraph that
6 is two above the one that was quoted that starts with
7 "Lehman Brothers' management made a decision"; do you see
8 that?

9 A Yes.

10 Q Okay. I'm going to try to read that. Would you follow
11 along and let me know if I read that correctly.

12 A Yep.

13 Q "Lehman Brothers' management made a decision in 1994
14 shortly after it became a publicly traded firm to establish
15 a stock award program that provides every member of Lehman
16 Brothers with an ownership interest in the firm and a
17 requirement that the stock be held for five years. As noted
18 in their annual stock award distribution to its employees,
19 the program provides an incentive to think and act like an
20 owner every day and allows all participants to share in the
21 firm's financial success over time."

22 You did put that in your letter, right?

23 A That's correct. That was the marketing material they
24 provided to us.

25 Q And then you later said, "You most certainly thought

1 and acted like an owner during your 18 years at Lehman
2 Brothers every day" and then you said, "but you felt the
3 management decision to establish the program handcuffed your
4 ability to manage your RSU investments as you have managed
5 your other investments," correct?

6 A That's right.

7 Q If we flip over to the end of this, I would like to
8 direct your attention to the paragraph on page 6 that begins
9 with the word "Actually"; do you see that?

10 THE COURT: Annually?

11 MR. MILLER: I'm sorry. I did misread it and I
12 did misspeak. I apologize, Your Honor.

13 It's: Annually.

14 THE WITNESS: Yes.

15 BY MR. MILLER:

16 Q All right. And, again, I'd like to read just the first
17 two sentences and then ask you a question.

18 "Annually, Lehman Brothers went through a well-
19 coordinated set of sessions to manage compensation expense.
20 As a manager, I attended training sessions organized by the
21 human resource department to learn and practice the script
22 for that year in compensation conversation with my staff."

23 Did I read that correctly?

24 A That's correct.

25 Q So do I understand from that, that you were trained and

1 then you, in turn, repeated this message that you were given
2 in your training to your staff; is that correct?

3 A That's correct. What they did was they told us what to
4 do. They then had us sit in a room and we had an individual
5 who was going to act like the employee and we would act like
6 the employer and we needed to discuss how the firm did; how
7 the division did; how our department did; how the individual
8 did; and as a result, this was the compensation that you
9 were being awarded. This was your base. This was your
10 bonus, and that was the breakdown of your bonus and what was
11 actually going to be RSUs.

12 Q All right. And when you did those sessions, did you
13 try to present accurately, as you understood it, the
14 information to your staff?

15 A I presented it the way they asked me to.

16 Q Well, did you believe that some of the way that you
17 were asked to present was not an accurate statement of the
18 numbers or what was going to happen?

19 A I was totally unhappy with that part of my employment
20 there, but I -- as a good corporate citizen, I did what I
21 was asked to do.

22 Q All right. If I could read the next sentence, it says
23 "The overall message associated to the RSU program was that
24 compensation was withheld in order to ensure that we felt
25 like owners and personally had skin in the game."

1 Did I read that correctly?

2 A Correct.

3 Q And is that the way that you presented the message to
4 your staff?

5 A Did I use "skin in the game" -- no; but I presented
6 that the firm wanted us to feel like we were managing this
7 like it were our own and it was our job to do whatever we
8 could to minimize expenses, as well as help the trading and
9 salespeople optimize their generation of revenue.

10 Q All right. What did you mean by the term "skin of the
11 game" when you used it in this filing?

12 A Feel like you've got something to gain by doing this,
13 to feel like you put your heart and soul in something with
14 the hopes that, ultimately, the firm will be in a better
15 place.

16 I will tell you for years being involved in the
17 expense management situation of all of the technology
18 department, the firm not only had an expense issue, they had
19 a revenue problem. And the fact was they knew that the only
20 way they could get their financials to be where they needed
21 to be was to work both sides, to work the revenue
22 generators, to do whatever they can to generate more
23 business and to keep driving expenses down. We had
24 thermometers on our walls that showed everybody how much we
25 had done to reduce expenses. It was a -- it was a mindset

1 in that organization for years.

2 Q All right. Well, are you aware of the fact that
3 basically every investment banking firm had an equity
4 program by the year 2005 of something?

5 A I was not aware.

6 Q All right.

7 A My head was down and unfortunately when the bankruptcy
8 occurred, as well as when I went on to Barclays, I never
9 spent any time thinking about going elsewhere. I thought
10 about doing my job day in and day out. So what other firms
11 had, I had no clue.

12 Q All right. I want to take just a minute and talk about
13 the compensation ratio. Your letter has some tables on page
14 8 and page 9 about the compensation ratio, correct?

15 A Uh-huh.

16 Q Do I understand correctly that the point that you're
17 making is that the investment -- that the community you were
18 describing here, which you had called the "rating agencies
19 in the investment community"; do you see that reference?

20 A On which page?

21 Q This is on page 8. This is the paragraph that begins
22 with "With the finesse with which Lehman Brothers handled
23 compensation expense"; do you see that?

24 A Yes.

25 Q And you say that -- looking just at the last sentence

1 above the table "Lehman Brothers engineered the compensation
2 and benefits net ratio to stay within a 49 to 50 percent," I
3 guess that has the word "range," "to please the rating
4 agencies in the investment community"; do you see that
5 reference?

6 A Yes.

7 Q Did you understand that what the investment community
8 wanted was to see not higher than a 50 percent ratio?

9 A That's correct.

10 Q So when you did your substitution in your little
11 analysis of what happened if the RSUs had been paid in cash,
12 what you came up with, I think you estimated was 60 percent,
13 right?

14 A I knew it was somewhere higher. I mean I had done this
15 with a couple of other people and we were trying to figure
16 it out and we came out, each time we did it, close to 60; it
17 was just underneath.

18 Q So if I understand the analysis that you did, what you
19 concluded was that Lehman couldn't really afford to pay in
20 cash the amounts that it was trying to deliver with the
21 combination of cash and the equity program if everything
22 worked out at the end of five years; is that right?

23 A That's right. Because they had to spend the money on
24 the capital improvements they needed to build the firm and
25 deliver the infrastructure that they required.

1 Q All right. So from a standpoint of the employees, do
2 you know up through the, say 2003 when the equity awards
3 program obviously didn't get to play itself out, whether
4 generally speaking the equity awards program did deliver at
5 least as much compensation as would have been able to be
6 paid in cash earlier?

7 A I'm not sure that I understand the question.

8 Q Yes, let me try again.

9 Did your analysis consider -- let's take time up
10 through 2003. Up through 2003, do you know if employees got
11 as much from their compensation that was a combination of
12 cash and equity awards, as they would have gotten if they --
13 at least as much -- as if they had been paid in cash at the
14 time that the equity awards were made, do you know the
15 answer?

16 A I'm still struggling. I'm not sure that I understand.

17 Q All right. Well, did the equity awards program, as you
18 understand it, in effect, allow Lehman to give a greater
19 total compensation package to its employees than it would
20 have been able to give if it had not used RSUs or something
21 like RSUs?

22 Did you --

23 A I'm not -- I'm really not --

24 THE COURT: Do you want me to try, Mr. Miller?

25 MR. MILLER: Sure, please do, Your Honor. I would

1 love to have you try.

2 THE COURT: Okay. So what Mr. Miller is trying to
3 ask is if you know whether or not -- you just testified that
4 Lehman had to keep down expenses and one of the expenses it
5 has to keep down was compensation expenses. And in order to
6 facilitate that -- which now looking back with the wisdom of
7 hindsight looks like a scheme, right -- in order to
8 facilitate that, they said, Ah ha, instead paying the
9 employees all in cash, let's save that cash money and let's
10 pay them with RSUs, right?

11 THE WITNESS: Uh-huh.

12 THE COURT: So the predicate of your analysis was
13 that if they couldn't afford to pay us all in cash, so in
14 order to facilitate the continuation of the business and the
15 build-up of the infrastructure, we're going to pay the
16 employees in RSUs, right?

17 THE WITNESS: Right. Right.

18 THE COURT: Like Monopoly money, right?

19 THE WITNESS: Right.

20 THE COURT: And what Mr. Miller is asking you is
21 that if you accept that, which they -- so they began to pay
22 part in cash and part in these RSUs, but at the end of the
23 day, once you cashed in the RSUs, right, did it ultimately
24 cost the firm more or less than it would have, had they
25 actually paid it in cash than in the RSUs?

1 Does that -- did I do any better?

2 THE WITNESS: I think so, but I think they were
3 hoping that the five years since they generated this, they
4 would have been in financially better shape --

5 THE COURT: Sure.

6 THE WITNESS: -- to be able to afford to cover
7 that.

8 But I think that while they were covering the
9 five-year one that occurred, the next one was being issued.
10 So, in effect, if you ask me, and I don't know this, but I
11 would think that when they issued the next one, they were
12 using that money to pay us from five years before.

13 THE COURT: So it felt -- it feels to you like a
14 Ponzi scheme?

15 THE WITNESS: It felt like they were -- they were,
16 you know, borrowing to hopefully hit the right revenue
17 stream and reduce their expenses enough so that ultimately
18 they would be able to breathe a sigh of relief and be able
19 to actually land, you know, in the black and be able to pay
20 off their RSUs and be able to function.

21 MR. MILLER: Can I do a follow-up on that?

22 THE WITNESS: I'll try.

23 BY MR. MILLER:

24 Q Sure. Does "skin in the game" include a risk of losing
25 something if the game is lost?

1 A Sure. I think that the goal is if you put enough in
2 it -- I mean my attitude in my life has always been: I will
3 never fail, I will survive, come hell or high water. But
4 there are clearly times when you do a project and it does
5 not work out as well.

6 So can you lose money -- absolutely; the
7 difference is I didn't want that risk.

8 THE COURT: And that's why you sold those shares
9 the day you could?

10 THE WITNESS: The day I could.

11 MR. MILLER: May I approach, Your Honor?

12 THE COURT: Sure.

13 BY MR. MILLER:

14 Q I'm handing you what's been marked CLX-055 which is a
15 declaration that I believe you filed, Ms. Krieger, in this
16 case, right?

17 A Yes.

18 Q And I'm going to turn your attention to your claim form
19 that is attached, all right?

20 A Yes.

21 Q One of the things on the claim form is a stock
22 certificate; do you see that?

23 A Yes.

24 Q Was that stock certificate issued to you after the
25 Lehman bankruptcy or do you know when you got the stock

1 certificate?

2 A It was after the bankruptcy.

3 Q All right. So you said you did have some stock that
4 you did not sell before the bankruptcy; is that right?

5 A So the stock that I did not sell was the \$45,000. That
6 was the money that came out of the December -- that was the
7 stock that became available on December of 2007. So I chose
8 not to sell my conversion, and then I also had a little
9 piece that was in my IRA.

10 Q Now, you said in response to one of the questions that
11 you felt that the fine print was being changed and changes
12 in the fine print were not fully disclosed, if I'm
13 summarizing your testimony -- I'm just talking about the
14 subject; do you recall that?

15 A Yes.

16 Q And one of the things that you talked about is you said
17 that if the -- if you had been given stock certificates upon
18 the bankruptcy, you would have gone in and tried to sell
19 them for fifteen cents a share or something?

20 A I would have gone to talk to somebody and tried to
21 figure out what the best thing would have been, but I felt
22 like not having them, that Lehman Brothers was not actually
23 operating in line with the agreements -- in line with what
24 they told us the program was going to be. And oddly enough,
25 if you look in the later documents, the bankruptcy

1 discussion is totally removed.

2 So I'm going back to documents from 2000, 2001,
3 2002 where there were different terms year and year around
4 changing control and bankruptcy that talk about being
5 distributed on the actual vesting date, and then another one
6 said "or soon thereafter" so they would be available for us
7 to do something with them.

8 Q All right. Can I ask you to turn now in your claim
9 form to the page -- it's the second page in the claim form
10 and it's a document dated in the upper left-hand corner as
11 of August 31st, 2008 --

12 A Yeah.

13 Q -- and it's titled "restricted stock unit, award units
14 outstanding"; do you see that?

15 A Yes.

16 Q That is -- do you understand that to be a summary of
17 the RSU units that you held as of August 31st with the
18 bankruptcy being, of course, the next month?

19 A That's correct; that's what came out of the Lehmanlive
20 site.

21 Q And you don't -- and Lehmanlive, by the way, is a
22 computer web page, a portal that allows the Lehman employees
23 to --

24 A It is the intranet site to where all of our personal
25 information could be accessed, and as well as how they

1 communicated to us about goings on in the firm.

2 Q And did it have a document section where these program
3 documents, that you refer to in your letter elsewhere, were
4 available?

5 A There were some. I don't know whether every year was
6 there. I do know that for a person who keeps everything, my
7 physical documents ended in the early 2000, so I believe
8 there would have been someplace to actually access the later
9 program documents from 2002, 2003, to the end.

10 Q All right. In this sheet, if you look over, you'll
11 notice that there is a market value column next to the last
12 column; do you see that?

13 A The last column?

14 Q Yes.

15 A Yeah.

16 Q And that seems to be at five cents a share; do you see
17 that?

18 A Yep.

19 Q And that shows that your total market value, if you had
20 had all of those RSUs converted to stock as of that date,
21 was \$205; is that right?

22 A Yeah, that's correct.

23 Q And that's what you say you think you should have
24 somehow had that stock made available to you so you could
25 get the \$205?

1 A Well, I'm not sure that that ultimately would have been
2 the right choice. What my point was: The document said the
3 operational terms of the agreement would be that Lehman
4 would distribute the shares and in accordance with the rules
5 that they did, they did not follow their own procedures,
6 which were to distribute the shares at the time of the
7 bankruptcy.

8 Q All right. Well, do you know what the value was at the
9 time of the bankruptcy on September 15th; do you happen to
10 know that?

11 A I do not.

12 Q Do you know that it was even lower than five cents a
13 share by September 15th?

14 A It might have been. I have no idea.

15 Q Do you understand that the result of this motion is
16 that you will have the same equity interest that you would
17 have if you held shares of common stock for this number of
18 shares of common stock?

19 A I do understand that and that's why I'm fighting it
20 because I do not believe that those were equity shares until
21 they were actually equity delivered to us. That it really
22 was a contract and it was a contract to, in five years from
23 now, deliver me equity shares. But until then, they
24 borrowed my money; they withheld the cash.

25 Q You do understand that there's nothing in the program

1 documents that ever said that you had an option to get cash
2 instead of equity, setting aside a change of control or a
3 couple of other little details?

4 A No, that's why my intention was that as soon as I got
5 it, I would sell it, so that I would have no tie to Lehman
6 from an investment perspective.

7 Q All right. But you did understand that, I mean that's
8 what your point is -- that's because you understood you
9 didn't have an option to get money, that's why as soon as
10 you got a share, that's why you tried to sell it?

11 A That's right.

12 MR. MILLER: No further questions, Your Honor.

13 THE COURT: Okay.

14 MR. SCHAGER: No redirect, Your Honor.

15 THE COURT: Ms. Krieger, thank you very much. I
16 really very much appreciate your patience in coming here for
17 both days. You're welcome to stay or you're welcome to
18 leave if you have to get back to work.

19 THE WITNESS: Thank you.

20 THE COURT: All right?

21 THE WITNESS: Thank you.

22 THE COURT: Thank you.

23 All right. We've been going for quite a while.

24 I'm fine to continue, but we can take a break if you'd like
25 to take a break and then we need to wrap up.

1 Mr. Miller?

2 MR. MILLER: Your Honor, if we could have just a
3 very short break --

4 THE COURT: Sure.

5 MR. MILLER: -- for the benefit of our group and
6 everybody?

7 THE COURT: Yes.

8 Okay. Let's recommence at 3:45 and then we're
9 going to be in the homestretch and then I also want to have
10 some clarity about what we're going to do tomorrow.

11 Mr. Miller, have you and Ms. Solomon resolved your
12 differences with respect to Mr. Kenny?

13 MR. MILLER: I don't know yet, Your Honor. I need
14 to talk to --

15 THE COURT: Okay, all right.

16 Then let's come back at 3:45.

17 (Recess at 3:34 p.m.)

18 THE COURT: Please have a seat.

19 All right. What more do we have?

20 MR. KAPLAN: Mr. Ramallo, Your Honor.

21 THE COURT: All right. And are we having -- well,
22 let's just get started.

23 Ms. Solomon seems to be missing.

24 Please come up, sir.

25 Would you raise your right hand, please.

1 (Witness sworn)

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: Please have a seat, and thank you for
4 your patience in waiting so long to give your testimony.

5 THE WITNESS: You're welcome, and thank you
6 yesterday for letting me get my Blackberry, I forgot to
7 thank you.

8 THE COURT: No problem.

9 DIRECT EXAMINATION

10 BY MR. KAPLAN:

11 Q Full name is Henry Ramallo?

12 A Yes, my name is Henry Ramallo.

13 Q You're an employee of Neuberger Berman?

14 A Yes.

15 Q When did you first join Neuberger Berman?

16 A December of 1993.

17 Q And in what capacity did you join Neuberger Berman?

18 A I was the assistant tax manager.

19 Q And did there come a time when you became an asset
20 manager or a portfolio manager?

21 A Yes.

22 Q And when was that?

23 A It was a transition period between 1998 and 1999, and
24 the reason for that is Neuberger Berman tried to go public
25 two times; 1998 turned out to be not the right time, so I

1 would get dragged back in to help with the documents and the
2 distribution of founder shares.

3 At the year end of '98, I worked with the
4 portfolio manager, Dick Weismann, who hired me. Then it ran
5 into tax season and they asked me to stay on and do tax work
6 for the first part of '99. After the tax return estimates
7 were done, I joined Dick Weismann, let's say, in April of
8 1999.

9 Q Dick Weismann had a group of money managers working?

10 A Neuberger Berman has today approximately 40, 41
11 different product teams, but there are 23 different
12 portfolio management teams, maybe 24; the Weismann Group, as
13 it was referred to, was one of those 23, 24 teams.

14 Q And you joined --

15 A I joined Dietrich -- his name was Dietrich Weismann. I
16 joined Dietrich Weismann officially, as I said, probably in
17 April of 1999.

18 Q And subsequent to joining Mr. Weismann, did you develop
19 a book of business?

20 A No, the Weismann team worked differently than it
21 works -- than the group I'm currently with now. When I
22 joined the Weismann team everything fell into his book of
23 business. I was there. How he worked it, you had a
24 response -- you had either a primary or secondary
25 responsibility for the stocks that were owned in the book.

1 So I had primary responsibility on some and secondary
2 responsibility on others.

3 He viewed them --

4 Q And --

5 A Pardon me. He viewed them as all of his clients,
6 although I did the majority of the communication with the
7 clients. That was something that he did not like to do.

8 Q And did there come a time when you left the Dick
9 Weismann Group and joined another group?

10 A Yes.

11 Q And when was that?

12 A In 2003.

13 Q And what group was that?

14 A It's known as the Straus Group.

15 Q And as a member of the Straus Group, did you develop a
16 book of business?

17 A I was actually able to take -- Dick Weismann was asked
18 to basically retire. His book of business was broken up.
19 Jim Baker, who was one of my colleagues at the time, took
20 the institutional business. I was able to take the retail
21 business and move over to the Straus Group, and part of that
22 business, part of that business started off as my book of
23 business.

24 Q And since then, you've developed other -- you've
25 enlarged that book of business?

1 A Yes, I have.

2 Q Okay. Now, in the period from 1999 when there was the
3 initial public offering of Neuberger to be acquisitioned by
4 Lehman in 2003, were you awarded any Neuberger Berman stock?

5 A Yes, I was.

6 Q And in connection with those stock awards, did you
7 enter into any restricted covenants?

8 A Yes, I did.

9 Q And at the time of -- in the months preceding the
10 acquisition of the merger with Lehman Brothers, were you
11 presented with a retention agreement?

12 A Yes, I was.

13 Q And in connection with that, did you have discussions
14 with someone named Heidi Steiger?

15 A Yes, I did. I happened to be on vacation and I
16 received a phone call from Heidi that she wanted to speak to
17 me.

18 Q And just who was Heidi Steiger in the universe of
19 Neuberger Berman?

20 A Heidi Steiger, as Ms. Krieger already stated, was her
21 predecessor in building the wealth management division of
22 the firm, but she became an executive committee member and
23 she was serving a role and facilitating Jeff Lane and Bob
24 Matza, Jeff Lane being the CEO of Neuberger Berman, and Bob
25 Matza being the President of Neuberger Berman, she was asked

1 to play the role in getting everyone to sign these retention
2 agreements that were being given to us.

3 Q And in connection with the retention agreement, you had
4 a number of interactions with Ms. Steiger?

5 A No, there were only two interactions. One was the
6 phone call when she called me while I was on vacation and
7 she wanted to either start faxing me or overnighting me a
8 package of documents that she wanted me to send back. I
9 told her that I was at the tail end of my vacation and could
10 it wait until I returned. I said "Can I ask just what kind
11 of retention I was getting" and she told me and I was
12 honestly a little bit disappointed. And I said to her -- I
13 started having a conversation and she politely told me that
14 this wasn't a negotiation; this was the offer.

15 MR. MILLER: And, Your Honor --

16 THE COURT: And what was the date of this
17 conversation?

18 THE WITNESS: In August of 2003, Your Honor. I
19 can't give you the exact date.

20 THE COURT: Okay.

21 Yes, Mr. Miller?

22 MR. MILLER: Your Honor, we want to lodge an
23 objection. At this point in time there was not an ownership
24 relationship between Lehman Brothers Holdings, Inc. and
25 Neuberger Berman, so this is not an admission by --

1 THE COURT: It's hearsay.

2 MR. KAPLAN: It's hearsay being offered only to
3 show its impact on the actions thereafter taken by
4 Mr. Ramallo.

5 MR. MILLER: If it's offered for state of mind of
6 the listener, we don't object, Your Honor.

7 THE COURT: Right.

8 MR. MILLER: If it's offered for the truth of the
9 matter stated, we do object.

10 THE COURT: Right. So -- well --

11 MR. KAPLAN: And we are offering it only for its
12 impact on Mr. Ramallo and not the truth.

13 THE COURT: Okay. I'm not so sure that that's
14 actually how you've used it in the briefing up to this
15 point, but you can keep going.

16 And I agree with Mr. Miller's characterization of
17 the appropriate scope of the use of the testimony, all
18 right.

19 BY MR. KAPLAN:

20 Q Well, you were saying that there was this telephone
21 conversation when you were on vacation -- have we finished
22 that conversation?

23 A No. The conversation basically was that she did agree
24 to wait until I got back to the office because it was just a
25 waste of time. I didn't have a fax machine available. I

1 wasn't going to start asking the hotel to have confidential
2 documents sent to me, and, no, I simply did not want it to
3 be overnighted at that moment because it was at the tail end
4 of my vacation. And I said "Can we deal with this when I
5 get back on Monday" and she agreed. And I'm not
6 exaggerating; she was at my door on Monday, first thing in
7 the morning. As soon as she arrived she was at my door of
8 my office --

9 Q And what happened?

10 A -- with the documents in hand and she asked me to sign
11 these documents and I asked her "Don't I even have the
12 opportunity to review them?"

13 She said, "Of course" but at that time, she also
14 pointed out that if I wasn't going to agree to this, that
15 the transition that I was making, this would jeopardize that
16 transition and it would jeopardize my career at Neuberger
17 Berman.

18 Q When you say "the transition you were making" you mean
19 from the Weismann Group to the Straus Group?

20 A From the Weismann Group to the Straus Group, correct;
21 that's what I mean.

22 Q Yeah.

23 A That's what I'm referring to.

24 Q And let me show you what's been marked as Neuberger
25 Berman Exhibit B and ask you if you recognize that document.

1 A Yes, I do.

2 MR. KAPLAN: Your Honor, do you want it?

3 THE COURT: I have it, thank you.

4 BY MR. KAPLAN:

5 Q And is that the retention agreement that you ultimately
6 signed?

7 A Yes, it is.

8 Q And why did you sign that agreement?

9 A I signed this agreement because I had no other choice.
10 It was simply stated that if I was -- if I can just give you
11 a little more color, Your Honor?

12 THE COURT: Sure.

13 THE WITNESS: My undergraduate degree is in
14 aerospace engineering. Part-time I went and got an MBA with
15 majors in taxation and finance. Many years earlier I wanted
16 to go to Wall Street and pursue this career, whether in
17 research or portfolio management. It was a long, hard
18 struggle. I finally got the opportunity ten years after
19 starting my MBA.

20 And what I've learned even in that short time
21 period, that you need to have your own track record.
22 Because under the way that Dick Weismann operated, I
23 wasn't -- had the opportunity to show I had my own
24 established track record, which I do today because Marvin
25 Schwartz and the Straus team operated differently.

1 So for me to turn around and give up the dreams
2 and what I pursued and to really grasp at this brass ring
3 that I was given -- and I'm not referring to the amount of
4 this retention, I'm saying what I viewed as the brass ring
5 was the opportunity that very, very few people like myself
6 had gotten at Neuberger Berman to make that type of career
7 choice. Today there are no job postings -- I don't know how
8 many job postings there are at Neuberger Berman, but I'm
9 willing to guarantee that there are no job postings for
10 portfolio manager. So I was being given a very unique
11 opportunity at the firm, an opportunity that I don't think
12 that I would receive anyplace else.

13 So it was either the firm knowing that if they
14 wanted my help in retaining the \$600 million dollars at the
15 time that I was -- when I was leaving Dick Weismann's group,
16 if they were going to have any chance of retaining those
17 assets, I was going to play a role. I wanted to continue
18 this. When Marvin Schwartz actually interviewed me for the
19 position -- because it wasn't like he just hired me -- he
20 asked me at the end of my -- and you have been doing with
21 some of the witnesses -- is there any final statements that
22 you would like to make?

23 And I said "Yes, this is the first firm that I've
24 been at for more than five years." I had spent five years
25 at Grumman Aerospace, five years at (indiscernible -

1 2:34:56), five years at -- I'm drawing a blank right now --
2 and I said "I would like to retire from this firm."

3 Months later, Marvin told me that was one of the
4 selling features. So my heart and having this opportunity
5 and to pursue this and the fact that two other times in my
6 career, my wife had tolerated me making changes in careers,
7 taking setbacks, both financially, pure economics, whether
8 it be on a pure comp, 401(k), seniority, vacation time. I
9 wasn't about to start subjecting her to do this again. It
10 was one thing I did in my twenties and it's another thing I
11 did in my thirties. I didn't want to start to do this again
12 in my forties, because by that time I also had three
13 children, besides other family responsibilities.

14 So at the time, you know, I started at the firm
15 making \$60,000 a year. By this time I was graced with the
16 ability that I was making between \$350,000 to \$400,000 a
17 year and the firm is offering me a piece of paper that says
18 they're going to also give me \$500,000. To me, at that
19 moment, it was life-altering, so, yes, I decided to make the
20 decision to stay and not take this somewhere else because I
21 didn't think there would be anyone else who would look at my
22 background, as qualified as I felt I was, to match what I
23 was getting at Neuberger Berman.

24 BY MR. KAPLAN:

25 Q Did the -- following the acquisition by Lehman

1 Brothers, did the pay structure or the way you were paid
2 change between from what it was at Neuberger Berman, as a
3 standalone entity?

4 A Absolutely. When I started at Neuberger Berman I was
5 salaried and bonused. Under Dick Weismann I went to what
6 was known as a comp -- I was an added expense to the firm.
7 I was an expense to Dick Weismann at some point in time.
8 The firm usually does ask groups to take on the
9 responsibility of compensating portfolio managers and
10 research assistants within the group, so I was Dick
11 Weismann's expense. And at that point in time, I did not
12 have a partnership interest. I wasn't a founding partner as
13 Stephanie was, but when I switched over to the Straus Group,
14 Marvin Schwartz put me on their direct comp guaranteeing me
15 \$350,000 with a potential for bonus. But, again, not a firm
16 bonus, a bonus that they would pay, the team would pay.

17 And then what ultimately happened, subsequent --
18 so this is 2003 moving forward -- sometime in 2004 -- at the
19 end of 2004 he discussed making me a part of the group. In
20 2005, that's when it started, which meant now that I had my
21 book of business. I was going to be paid out based on the
22 AUM, the assets under management.

23 And I would like to correct something that was
24 incorrectly stated earlier. The firm gets paid, let's say
25 somewhere between one and one and a half percent, but we

1 get, as Stephanie alluded, somewhere between -- well, it's
2 twenty-two percent business, if you got that line of
3 business, twenty-five percent business. The only way it
4 gets to a forty percent business is if you've met certain
5 high-water marks, so not all our business is paid out at
6 forty percent.

7 So without any stretch of the imagination, I was
8 given a partnership percentage within the Straus Group and
9 then thereafter rolls around 2008, we are being told that
10 Lehman is taking us over -- excuse me, 2003 -- pardon me,
11 2003, Lehman is taking us over. And so I was under the
12 structure that I was basically as they like to say, "eating
13 what I was cooking," but now going forward, eventually, as
14 we were told in 2004 that we were going to have to move in
15 line with Lehman's compensation structure, and the Lehman
16 compensation structure involved a withholding, a deferred
17 comp piece.

18 And just before -- if any records -- I'm going to
19 put this out on the table -- there was a mistake made
20 online. Because I don't have all -- what I mean by mistake,
21 I was made a managing director at the end of 2003, but a
22 computer system that got transferred over to Lehman's
23 actually had me as a senior vice president, so they withheld
24 the wrong amount and they came back to me two years later
25 asking me to make it up and I told them that I thought they

1 were crazy if I was going to write a check for their
2 mistake. So I was underwithheld because I was withheld at
3 the SVP level, although I was a managing director.

4 I will say two other things --

5 THE COURT: So you were underwithheld meaning
6 that -- when you say "withheld" you mean the portion of your
7 compensation that was paid in RSUs?

8 THE WITNESS: No, the deferred comp.

9 It wasn't paid in RSUs. I was under -- they
10 withdraw -- they would hold part of your compensation.
11 Throughout the year, as has been stated previously, in a
12 sense, we are lending the firm the money and at the end of
13 the year, they are going to buy you RSUs.

14 THE COURT: They are going to buy you RSUs?

15 THE WITNESS: RSUs, the restricts stock units,
16 okay.

17 So that's how it was deemed, so the firm -- so the
18 firm is holding money --

19 THE COURT: Hold on a minute. Hold on a minute.

20 So if -- your understanding of it is that you're
21 paid the compensation in, let's call it \$30,000 a month, all
22 right, and that a portion of that \$30,000 a month, \$360,000
23 a year, is withheld?

24 THE WITNESS: Correct, Your Honor.

25 THE COURT: And that cash is put somewhere in an

1 account?

2 THE WITNESS: Correct, Your Honor.

3 THE COURT: And you then pay taxes on that

4 \$360,000?

5 THE WITNESS: No, Your Honor.

6 THE COURT: Okay. So you only pay taxes on the

7 amount of cash that you actually got, right?

8 THE WITNESS: Constructive receipt, yes, Your

9 Honor.

10 THE COURT: And the deferred compensation was the

11 RSUs that you then got for the work that you performed that

12 year?

13 THE WITNESS: Eventually, Your Honor.

14 THE COURT: Eventually, okay.

15 So when you say that you were underwithheld, that

16 means that had they done it correctly, you would have gotten

17 more RSUs?

18 THE WITNESS: No, in a sense, I would have had

19 more withheld and then ultimately I would have had more

20 RSUs.

21 THE COURT: More RSUs.

22 THE WITNESS: But they made that up, Your Honor.

23 As I said, they did make it up. They caught the mistake --

24 THE COURT: Okay.

25 THE WITNESS: -- they just wanted me to write a

1 check.

2 THE COURT: But you didn't do that?

3 THE WITNESS: No, but I -- because that's when you
4 started to ask your questions -- I was going to say --

5 THE COURT: Yeah.

6 THE WITNESS: -- what we agreed to do is that they
7 would take it out of my future comp. So they made it up by
8 taking it out of my future comp.

9 THE COURT: I see.

10 THE WITNESS: So they made up the error, but a
11 later year. So I was anticipating if the numbers looked
12 funny before they show me anything -- my case is so much
13 more back-end loaded because if I was supposed to have fifty
14 percent withheld, I can't remember if they were withholding
15 thirty-five or forty percent.

16 THE COURT: Okay. But in any event, none of these
17 RSUs could be converted because they were all within the
18 five years prior to the filing?

19 THE WITNESS: Correct, Your Honor.

20 THE COURT: Okay.

21 THE WITNESS: So they started withholding in 2004
22 and they didn't -- you know, the five years had an
23 anniversary and so we got zero, except for what has already
24 been said, that final year of deferred comp that was
25 returned to us.

1 THE COURT: Okay.

2 BY MR. KAPLAN:

3 Q The 2008 deferred comp --

4 A 2008 deferred comp.

5 Q -- was paid to you in cash in 2009?

6 A Correct.

7 MR. KAPLAN: Nothing further, Your Honor.

8 THE COURT: Okay.

9 Mr. Miller?

10 Well, let me ask you: What was the amount that
11 you received in 2009, which is the time period -- the late
12 2008, early 2009 time period is the time period in which --
13 were you about to ask that question?

14 MR. MILLER: Well, we do have this chart, Your
15 Honor. I'm not sure if he's going to want to disclose that
16 amount publicly. He can if he wants to, I just -- we're
17 going to do the same thing within a moment.

18 THE WITNESS: If you don't mind, Your Honor, I
19 would like to have the opportunity to do what you did with
20 Ms. Krieger.

21 THE COURT: Sure, absolutely.

22 MR. MILLER: I was just offering that, Your Honor,
23 as an option for his privacy.

24 THE COURT: All right. And which exhibit?

25 MR. MILLER: That would be my first.

1 THE WITNESS: Am I allowed to thank him?

2 Can I say thank you, Mr. Miller?

3 THE COURT: I'm used to there being -- you know,
4 in contrast to some of the testimony we've heard over the
5 last two days, bankruptcy and court proceedings are supposed
6 to be public and transparent processes. We do protect
7 personal financial information, but my baseline is that it's
8 supposed to be open.

9 So I'm not -- I wasn't seeking to put your
10 personal financial information out there.

11 THE WITNESS: I didn't take it that way, Your
12 Honor.

13 THE COURT: Okay.

14 THE WITNESS: I mean, I'm just going to say that
15 for somebody who started at \$60,000 a year and had happen
16 what has happened to me --

17 THE COURT: I understand.

18 THE WITNESS: -- I'm still somewhat -- I don't
19 believe it at times and I feel very grateful and sometimes
20 embarrassed. I don't like to discuss it publicly.

21 THE COURT: I understand.

22 MR. MILLER: May I approach the witness, Your
23 Honor?

24 THE COURT: Sure.

25 MR. MILLER: All right. I'm going to give you the

1 Thoisseau (ph) declaration which you may have seen before.

2 This is Lehman Brothers Holdings, Inc. Exhibit 3.

3 I believe Your Honor has one, but I have two more
4 copies if you need one.

5 THE COURT: I do. Let me -- I think I have it
6 here. I have it.

7 MR. MILLER: I've got two more.

8 THE COURT: I have it, thank you.

9 So perhaps, Mr. Kaplan and Mr. Miller --

10 MR. MILLER: Yes?

11 THE COURT: -- do you want to do the same thing --

12 MR. MILLER: Do the same thing we did before, Your
13 Honor?

14 THE COURT: -- you did previously?

15 MR. MILLER: All right.

16 CROSS-EXAMINATION

17 BY MR. MILLER:

18 Q And so were you here for Ms. Stiefel's testimony?

19 A Yes, I was, sir.

20 Q So, you saw we're going to --

21 THE COURT: Stiefel.

22 THE WITNESS: It's actually Stiefel, yes.

23 MR. MILLER: I'm sorry -- Stiefel, Ms. Stiefel's
24 testimony.

25 BY MR. MILLER:

1 Q I believe there's ten lines and I'm going to show you
2 this and if you want to, you can point. I believe I know
3 which one it is, and then we're going to write a number on
4 this piece of paper and see if you agree, and then we'll
5 show it to the Court.

6 A Yes, sir.

7 Q So we're in agreement on the line?

8 A Yes, sir.

9 Q Let me check my count here. Let me show you this.
10 Just count from the top and make sure that you come up with
11 the same -- count lines down.

12 A Oh, which line? I apologize.

13 Q Just the line there, all we're going to do is show them
14 the line. So they got the chart, just like you.

15 A Yes, sir. I agree with you.

16 Q All right.

17 MR. MILLER: Your Honor?

18 THE COURT: Okay. Very good, thank you.

19 BY MR. MILLER:

20 Q So we can use this to answer the Court's question which
21 was how much you received in 2000 -- early 2009 for your
22 deferred compensation in 2008; is that correct?

23 A Yes, sir.

24 Q And on that line that we just identified, that would be
25 the last number in the column, 2008 deferred compensation;

1 is that right?

2 A Yes, sir.

3 Q And if we look -- let's go to some earlier lines.

4 A Do you mean earlier years, sir?

5 Q Yes, I did. I misspoke. Let me try that again.

6 Earlier columns, actually 2003, for example, as
7 with Ms. Stiefel, there was no deferred compensation for the
8 2003 year; is that correct?

9 A That's correct, sir.

10 Q And you received the same, approximately -- and it may
11 not be to the penny, but we're looking at gross income --
12 approximately the amount shown for 2005 in cash commissions;
13 is that correct? On line 5, of 2005, I'm asking you.

14 A It wasn't called -- well, yes, sir, that's what this
15 column says, but I never called it commissions. I would
16 call it compensation, but, yes.

17 Q All right. It is compensation?

18 A Yes.

19 Q And then if we go over approximately amount shown for
20 past commission was the cash that you received in 2006,
21 correct?

22 A Yes, sir.

23 Q That was a significant increase, as many of these lines
24 are, between 2005 and 2006; is that correct?

25 A I would be happy to explain it.

1 Q Well, I'm not asking you -- I'm just asking you, it is
2 an increase?

3 A Yes, sir.

4 Q And then there's a further increase to 2007; is that
5 correct?

6 A Yes, sir.

7 Q Now, you're saying that you did not receive the amount
8 shown for deferred compensation in 2007 because that was
9 part of the RSU program; is that correct?

10 A Yes, sir. That became part of the RSU program.

11 Q But the combined amount that you received in 2008 was
12 substantially greater than the cash that you received in
13 2007, since you did, in fact, receive the deferred amount;
14 is that a true statement -- just asking you about it.

15 A No, no, I'm just looking -- checking the numbers, sir.
16 On a combined basis, it would be more than I received in
17 2007 on a cash basis.

18 Q All right. So when Ms. Steiger came to you after your
19 vacation, did she threaten you with anything that you viewed
20 as illegal conduct?

21 A Sir, to me illegal conduct is putting a gun to my head.
22 No, just verbally, she told me that there was no choice.

23 Q Well, I want to be clear for the record. She did not
24 threaten some harm, physical or financial, to you -- and by
25 financial, I mean she didn't say that your bank account will

1 be drained by a hacker, for example, or that your house will
2 be burned down or any sort of clearly illegal conduct to get
3 you to sign; is that true?

4 A She said that this wouldn't be -- the retention bonus
5 wouldn't be available to me, so that is financial.

6 Q All right. So that's what she said, she said the
7 retention bonus would not be available to you?

8 A Correct, sir.

9 Q All right. So you felt like you had no choice, but to
10 take that retention bonus because you needed it, is that
11 what you're saying?

12 A Yes, sir.

13 Q And you made the decision to continue after that date
14 and work at Neuberger Berman -- you're still there now?

15 A Sir, I'm still there now, and as I stated earlier,
16 there was no -- there were no options for me to get another
17 job that I currently have anywhere else, I'm convinced of
18 that.

19 Q All right. Nowhere to get a job at anything like these
20 compensation levels, is that what you're saying?

21 A No, that's not what I'm saying. I'm saying I would not
22 have a portfolio management position anyplace else at any
23 compensation level because I lacked the track record.

24 Q All right. You would not get a portfolio management
25 job, sir?

1 A Correct --

2 Q But --

3 A -- or a research job, anything that I wanted to do,
4 sir.

5 Q And that was because you lacked a track record?

6 A In my opinion of how Wall Street works, yes, sir.

7 Q So it's not necessarily just because you signed these
8 covenants, it's because without the track record, you
9 just --

10 A (Indiscernible - 2:51:46) in the covenants, sir.

11 Q Well, let's look at the covenants for a moment. If I
12 may call your attention to Neuberger Berman Exhibit B,
13 please, there's a schedule B on page -- the page numbers are
14 a little bit hard -- it's got NB-116 in the lower right
15 corner; do you see that?

16 A 00116?

17 Q Yes, sir.

18 A Yes, sir.

19 Q That's the -- those are the restrictive covenants, I
20 believe, in this document -- you can look through them, but
21 I think that's where they are, right?

22 A It appears to be, sir, yes.

23 Q And these are for you for a period of 12 months from
24 the date of termination, not for a period of three years
25 that you heard about from Ms. Stiefel, correct?

1 A Correct, sir.

2 Q And was that because, as you understood it, you did not
3 have founder stock that you -- for 12 months?

4 A That's correct, sir.

5 Q And so you heard us go over this with Ms. Stiefel
6 before, right?

7 A Yes, sir.

8 Q But look at it from the bottom, this paragraph E was
9 that you would not solicit a person who worked at Neuberger
10 to go work at another firm, right?

11 A That's correct; that's what it says.

12 Q You could have gotten a job -- well, let's take Sanford
13 Bernstein, did they do what you did?

14 A Sanford Bernstein is in the same line of business, sir.

15 Q All right. Let's take Sanford Bernstein as a for-
16 instance. You could have gone to Sanford Bernstein and if
17 they had otherwise wanted you, you certainly didn't have to
18 bring employees with you; is that true? You could have
19 still gone there and offered your services and tried to get
20 a job?

21 A To be a chief cook and bottle washer in this industry
22 is very tough, but under your hypothetical scenario, maybe.

23 Q All right. Under my hypothetical scenario, number D
24 was that you would not employ any current or former employer
25 or consultant of the firm, other than clerical, secretarial,

1 or other similar support or personnel. So you could take an
2 assistant or a clerical support, but, again, if you went to
3 Sanford Bernstein, it would have been at least theoretically
4 possible for you to go and take your assistant.

5 It was allowed here, but not take anyone else,
6 right, theoretically?

7 A Yes, theoretically, sir.

8 Q All right. And if we go up to C, it was not to solicit
9 or accept business found through or engage in any sales or
10 marketing activities based on your financial planner or
11 financial institution. Now, there's a list here of people
12 with whom you had business contact during the one-year
13 period prior to your departure. There were a lot of people
14 in that category that's listed in paragraph C that you had
15 personally had not had any business contact with.

16 They existed out there in the world, right?

17 A They exist today, sir.

18 Q All right. B was that you would not solicit or accept
19 business from a prospective client of the firm who, within a
20 one-year period before, you had directly solicited or you
21 had supervised or participated in the firm's solicitation
22 activities; do you see that?

23 A Yes, I do, sir.

24 Q Now, you mentioned that there were various teams within
25 Neuberger Berman, right?

1 A That's correct, sir.

2 Q And I assume that you did not supervise or participate
3 in the solicitation activities for those other teams; is
4 that true?

5 A For the other teams -- no, sir.

6 Q And so, for example, this would not keep you from --
7 this particular paragraph -- from soliciting someone that
8 another team to your -- perhaps without your knowledge --
9 had dealt with if you had not personally or directly
10 solicited or you had not supervised or participated in that
11 solicitation, would it?

12 A I disagree, sir, and the reason I disagree is because
13 there are lawyers -- you know, we heard the term "good
14 leavers" joined this whole thing; there are also terms
15 called "bad leavers." If the firm wanted to say that I was
16 leaving on bad terms, it could actually cost me more than
17 the retention bonus because now I would have to be hiring
18 lawyers to start defending actions of what is being
19 described here. And what is being described here is,
20 obviously, written by lawyers and now I would have to start
21 explaining myself for what I did and did not do a year ago
22 and it would basically be impossible.

23 And so without the lack of a track record and
24 without the fact that I didn't have the direct clientele,
25 your perception is that I could have walked over to Sanford

1 Bernstein, and as Ms. Stiefel said "with basically nothing"
2 and have them hire me.

3 Q My question, sir, is actually about the document. The
4 document --

5 A And I'm --

6 Q Literally, it does not restrict you from trying to
7 solicit prospective clients that other teams at Neuberger
8 Berman had solicited during the year before, it doesn't
9 literally require that, right?

10 A No, I don't agree with that, sir. I believe it did. I
11 believe that Neuberger Berman was all-encompassing. If
12 Neuberger Berman saw themselves as a prospective client of
13 the firm that I was going to speak to them, that they would
14 see me as trying to poach the client.

15 Q All right. And let me ask you about the last one, this
16 is to solicit or accept business from any individual or
17 entity for whom the firm provides services in the year
18 before. There are people who are potential clients of both
19 Neuberger Berman and Sanford Bernstein that neither one
20 provides services to, right?

21 A Of course, sir.

22 Q Did you -- did you protest, in writing, having to enter
23 into this agreement at any time before this case, sir?

24 A The retention agreement you're referring to?

25 Q Yes, the retention agreement.

1 A No, sir.

2 Q And let's go back to the chart for a moment that you
3 had and let's -- what was the first year, regardless of what
4 the chart shows -- when you believe you became aware that
5 part of the compensation after LBHI acquired the stock of
6 Neuberger Berman would be paid in a deferred form under the
7 equity awards program, when did your first learn that?

8 A When -- if I may make sure I understand your question:
9 When did I first learn that Lehman Brothers was going to
10 withhold some of my compensation and ultimately put into RSU
11 and then five years later would be converted into equities?

12 Q Yes, sir.

13 A Okay. I learned about it in 2004, sir.

14 Q You learned about it in 2004?

15 A Yes.

16 Q Early in 2004?

17 A I will -- I am going to say in the first half of 2004,
18 sir.

19 Q All right. When, in 2004 when you -- well, first of
20 all, did you get a monthly statement of how much you were
21 going to be paid based on some kind of money production or
22 amount under management or something?

23 A As I stated, by 2004 I had joined the Straus Group and
24 I was told that I would be getting \$350,000. So in a sense,
25 all you had to do was divide that and say this is what it

1 was going to be. That's what they guaranteed me.

2 Q All right.

3 A It turned out to be formulaically a little bit more,
4 based on what actually happened, sir.

5 Q Okay. Do you think you did or did not receive deferred
6 compensation in 2004 for that year, that fiscal year?

7 A On a temporary -- on a timing basis, I did, but
8 eventually they made it up, sir.

9 Q On a timed basis you did or didn't?

10 A I received the money in 2004. The firm realized the
11 mistakes and they caught it back later on.

12 Q All right. So this is -- that was when there was a
13 makeup where, although you didn't have deferred compensation
14 that year, they deferred more in some later years; is that
15 what you're saying?

16 A Yes, sir.

17 Q Okay. But you became aware in 2004 that there would be
18 deferred compensation going forward?

19 A Yes, sir.

20 Q So, if you had chosen to leave during 2004, you didn't
21 have any deferred compensation that had been paid in 2003 or
22 2004 that you would lose; is that correct?

23 A No, but I would lose the retention bonus, sir.

24 Q All right. You would lose the retention bonus, but you
25 didn't have any deferred compensation?

1 A I said no, but I would lose the retention. I'm just
2 telling you where I was.

3 Q Okay. I understand. I just wanted to make sure that I
4 had an answer.

5 A No, you had it right. It was at that moment in time,
6 the firm had not withheld anything for deferred comp.

7 Q All right. But at that moment in time, you said that
8 you would have lost the retention bonus and you also would
9 have been subject to these various restrictions?

10 A Yes, sir.

11 Q You made a decision at that point not to leave, right?

12 A No, sir.

13 Q You didn't make a decision not to leave?

14 A Sir, there were no options for me, sir. You don't want
15 to believe it, but there were no options. I wasn't going to
16 go back to engineering. I wasn't going to go back to
17 accounting. The only place I feel that would continue to
18 give me the opportunity at that time to pursue a portfolio
19 management degree was Neuberger Berman.

20 THE COURT: Mr. Ramallo, can I ask you, though --

21 THE WITNESS: Yes?

22 THE COURT: -- by looking at the numbers on this
23 line, the platform at Lehman -- and you can provide
24 alternate explanation -- but the platform between the years
25 2004 and 2008, at least was coincident with there being a

1 ten-fold increase in the amount of your cash compensation,
2 if I'm reading this correctly.

3 THE WITNESS: Yes, and I'm happy to explain that.

4 THE COURT: And that was a period of time in
5 which -- I mean we now know in retrospect what happened
6 after 2008 -- but that was a period of time of tremendous
7 growth in the --

8 THE WITNESS: In the stock market.

9 THE COURT: -- the stock market.

10 THE WITNESS: And something specific to me, again,
11 Your Honor.

12 THE COURT: And what was that?

13 THE WITNESS: When I joined the Straus Group, like
14 I said, I came over with about \$600 million dollars. I
15 didn't get to keep the \$600 million dollars. It was
16 dispersed throughout some of the other portfolio managers.
17 I got to keep approximately \$150 million dollars under
18 management.

19 In 2004, Mr. Schwartz had an account, and out of
20 fairness and confidentiality I'm not going to disclose it,
21 but I will say it's a mutual fund that is sold throughout
22 Europe. This European bank had hired Mr. Strauss --
23 Mr. Schwartz, excuse me, in 1992. At the time when this
24 other bank took that account over, it was \$126 million
25 dollars.

1 Mr. Schwartz thought he was going to be fired from
2 the (indiscernible - 3:03:36). He asked me to participate
3 in that meeting because he wanted to show a deeper
4 (indiscernible - 3:03:41). The gentleman that came over on
5 that account not only did not want to fire us, he they
6 wanted to start adding assets and he liked the fact that
7 Mr. Schwartz had a much younger partner, because he
8 introduced me as his partner.

9 This account, because of what was going on in the
10 market and the fact that this firm had a tremendous
11 distribution arm, this account went from \$126 million
12 dollars to about \$4 billion dollars in the course of a
13 couple years. The Europeans just flooded us with money and
14 I was participating in that rapid increase.

15 THE COURT: I see.

16 THE WITNESS: And Mr. Schwartz was also increasing
17 my participation specifically in that fund each and every
18 year, including this year where now I actually have -- it's
19 not worth \$4 billion dollars anymore, it's about a billion-
20 dollar fund because the clients from that fund ran during
21 the Lehman event.

22 THE COURT: So this is now back at Neuberger
23 Berman, now, right?

24 THE WITNESS: It's never left Neuberger Berman.

25 THE COURT: Okay.

1 THE WITNESS: It never left Neuberger Berman, but
2 my participation increased to where now I'm up to 75 percent
3 ownership, but there's a lot less AUM, so my comp is lower.
4 So it's just all mathematical.

5 So this rise you see --

6 THE COURT: I see.

7 THE WITNESS: -- this temporary mediocre rise
8 because of how dramatically things were changing for me.
9 Plus, as you very eloquently stated, the market had five
10 terrific years prior to 2008.

11 THE COURT: Right. Right.

12 Can I just ask one more question: So who do you
13 report to now at Neuberger Berman?

14 THE WITNESS: You can say that, since I'm one of
15 the principals in the group, I always refer to him as my
16 senior partner, is Mr. Schwartz, but we have the president
17 and vice -- excuse me, the CEO, so you could say George
18 Walker and Joe Amato are my --

19 THE COURT: So you and, Ms. Stiefel, I mean it's
20 clear how you feel about your careers and what you built up
21 and about the firm, even though, as Ms. Stiefel testified, I
22 think she used the words "lean and mean."

23 You said "eat what you cook"; she said it, I
24 think, more vividly, "eat what you kill." It's a very tough
25 business.

1 THE WITNESS: Yes, ma'am.

2 THE COURT: But there's nothing precluding you
3 right now from going to the top folks at Neuberger Berman
4 and saying, I lost a huge amount of money while we were at
5 Lehman Brothers, make it up to me now. You could do that,
6 couldn't you? You could ask them to make up to you what it
7 is that Lehman Brothers wasn't able to pay you because of
8 the catastrophe -- and it was a catastrophe, there's no two
9 ways about it. I mean I'll never forget how I felt looking
10 at my numbers, you know, go right down, but you could go --
11 you and your colleagues could go and make that ask, couldn't
12 you? I mean it's math, right?

13 THE WITNESS: That's assuming, Your Honor, if I
14 may?

15 THE COURT: Yeah.

16 THE WITNESS: Theoretically, of course, I can
17 theoretically, however, being a person of ethics, when I
18 turn around and I face the person across the table and I'm
19 facing you --

20 THE COURT: Yes?

21 THE WITNESS: -- realizing that you were in the
22 same position that I am, because they also lost money at
23 Lehman Brothers, and because they were employed by Lehman
24 Brothers much longer than I was, and because --

25 THE COURT: Okay.

1 THE WITNESS: -- they were at a much higher level
2 than I was, I don't have it within my heart to actually sit
3 across the table from someone to say, you know what, I lost.
4 I realize you lost also.

5 How am I going to --

6 THE COURT: Okay.

7 THE WITNESS: So, no, I personally --

8 THE COURT: Would not do that?

9 THE WITNESS: -- within me -- no, I can't do.
10 In theory, you're right; I can do that.

11 THE COURT: Okay. And the only other thing is
12 that when the retention began, the retention program began,
13 that was prior to -- Lehman was not on the scene at that
14 point, right? I mean when the firm went public, Lehman was
15 nowhere on the scene.

16 MR. KAPLAN: The retention was at the time of the
17 acquisition, Your Honor.

18 THE COURT: Excuse me. The way it works is that
19 I'm talking to the witness.

20 MR. KAPLAN: I'm sorry, Your Honor.

21 THE COURT: If I wanted to ask you, I would ask
22 you, all right? Thank you.

23 When the -- you were at Neuberger Berman at the
24 time that it went public, right?

25 THE WITNESS: Yes, Your Honor.

1 THE COURT: And then the retention bonus program
2 was in August of 2003 and that was on the eve of the move to
3 Lehman Brothers?

4 THE WITNESS: It was -- if I recall correctly,
5 Your Honor, I think the deal was announced in July of
6 2003 --

7 THE COURT: All right.

8 THE WITNESS: -- so I was one of the people
9 receiving --

10 THE COURT: And then prior to that when the firm
11 went public, the firm imposed a restrictive covenant on you,
12 prior to the firm --

13 THE WITNESS: Because I had received some stock;
14 yes, Your Honor.

15 THE COURT: All right, thank you.

16 BY MR. MILLER:

17 Q In retrospect, it was certainly the right decision for
18 you to stay with Neuberger Berman, wasn't it?

19 A Yes, sir.

20 MR. MILLER: No further questions.

21 THE COURT: Okay.

22 Mr. Kaplan, any redirect?

23 REDIRECT EXAMINATION

24 BY MR. KAPLAN:

25 Q Mr. Ramallo, if the retention -- all things being

1 equal -- if the retention bonus had been one dollar, would
2 you have signed the retention agreement and stayed with
3 Neuberger Berman?

4 A Yes, sir; I would have paid Neuberger Berman the
5 dollar to stay with Neuberger Berman at that moment because
6 I was being given, at that moment, what was a life-long
7 pursuit, okay. So I would have signed the agreement, I just
8 didn't like the fact that I felt I deserved more because of
9 what I was actually doing helping save this line of business
10 from Dick Weismann. I played a major role -- these clients
11 stayed -- yes, I'm not going to deny, I'm not -- I don't
12 have my head filled -- moving over to the Straus Group with
13 Marvin Schwartz I'm not saying is not a (indiscernible -
14 3:09:47) it does help, but Marvin did not know these people.
15 This is a people business, so the fact that I was their
16 continuity, the fact that I had been dealing with their
17 trials and tribulations for the five years prior and the
18 demise of the Weismann Group, the demise of the tech bubble,
19 okay, because the difference between the Straus Group and
20 the Weismann Group -- the Weismann Group had three years in
21 a row of decline during the tech bubble and the Straus Group
22 only had one year down in 2002. So we had to boot some
23 disgruntled clients who had some off feelings toward Dick
24 Weismann, but liked me enough, so they were going to give it
25 a little bit more time, but I had to play. So base that I

1 was working 18 to 20 hours a day to try to get this
2 accomplished, at that moment, based on the economics of the
3 firm and knowing what I knew about other people, I was a
4 little dissatisfied with the half-million dollars. That's
5 human nature, sir, and that's all it is, but I would have
6 signed for the one dollar.

7 MR. KAPLAN: Nothing further.

8 THE COURT: All right. Thank you very much,
9 Mr. Ramallo. I appreciate your testimony and I appreciate
10 your patience in waiting until so late in the second day.

11 THE WITNESS: Thank you, Your Honor.

12 And thanks to everyone for all their work. Good
13 luck to everybody.

14 THE COURT: Thank you, sir.

15 Okay. What's next? I would really like to finish
16 up since we are way in -- we are in quadruple overtime.

17 MR. MILLER: Your Honor, by way of something
18 positive, Ms. Solomon and I are pleased to tell you that
19 we're not going to need to take any more time.

20 THE COURT: Okay. You're rewarding my faith in
21 the ability of lawyers to work things out at some level, so
22 that's great.

23 So are we done -- is the evidentiary record now
24 closed?

25 MR. KAPLAN: As to the Neuberger claimants, yes,

1 Your Honor.

2 THE COURT: Okay, as to any of the other
3 claimants?

4 MR. SCHAGER: Your Honor, I would like to
5 clarify --

6 MR. KAPLAN: Other than putting into evidence the
7 various --

8 THE COURT: Other than by your telling me which of
9 the documents are actually to be admitted into evidence,
10 then we're done with the testimony?

11 MR. KAPLAN: Yes.

12 THE COURT: Done with the offer of declarations?

13 Thank you, folks. Thank you very much.

14 Okay. Then do you want to, at the outset
15 tomorrow, give me your -- put on the record what the
16 documents are that you want to officially be part of the
17 record?

18 MR. KAPLAN: Yes, Your Honor.

19 THE COURT: Now, this has developed in a way that
20 was frankly a little not what I anticipated. And I know
21 that the procedures didn't contemplate it, but we've had a
22 much more voluminous factual record than the stipulation
23 promised.

24 We went into this -- my expectation was we were
25 going to have three hours, so now we've had -- I've lost

1 count -- but eight hours, or nine hours. And what that
2 means is that in order for me to do what I have to do, I
3 have to make factual findings, so I'm going to need from
4 each of you post-trial submissions that have factual
5 findings that you believe are appropriate to make. You have
6 to tell me what it is that you think that you have proved
7 that supports the relief that you've requested.

8 Had I known, going in, that this would turn into a
9 two-day evidentiary hearing, as opposed to a three-hour
10 evidentiary hearing -- less than three hours, because that
11 original three hours included the arguments of counsel. So
12 this is not at all -- this was not as advertised. In a case
13 where we're talking about things that were not as
14 advertised, this hearing was not as advertised.

15 So you might feel like I let you do this -- I did,
16 and the reason that I did it and because they're out of the
17 room now was because there was no way that I was not going
18 to let these people feel that they had an opportunity to be
19 heard. But you folks completely, completely did not
20 appropriately handle your end of the stipulation, completely
21 inappropriately, and I am perturbed, because I don't want
22 things this way. I run a tight ship and in order to afford
23 these people their due process rights, I was forced to
24 depart from my gold standard and I am really not happy about
25 it.

1 And in order to give them their due and write a
2 proper opinion in an appropriate period of time, because
3 they obviously feel that they've been delayed for an
4 inappropriate reason and I will tell you straight out that I
5 have a significant backlog at that point and I'm not going
6 to get to this. If I get to this in June I'll be lucky and
7 you can consult the docket and you can see for yourself what
8 it is that I have, by way of a backlog. I pride myself in
9 four years on the bench, I have never had a backlog, but
10 right now I have just come off of five weeks of trial in
11 another matter. Those people are waiting for work and these
12 people are just going to have to wait for work.

13 Now, I know and you know that there's not another
14 Lehman distribution for awhile, so that, in terms of
15 dollars, it doesn't matter. In terms of their emotional
16 cost, it matters because they feel like they've waited a
17 long time. So, therefore, even though it's outside the
18 stipulation, I'm going to ask that you prepare findings of
19 fact and post-trial conclusions of law because you need to
20 tell me what it is that you think that you've proved that
21 supports the relief that you've requested. And you can,
22 among yourselves, decide what the timing is on that, and
23 having told you that I can't get to this any time soon, I'm
24 not looking to, you know, impose tight time frames. I know
25 that Passover and Easter and the holidays and spring break

1 and the like holidays are coming up. So I put that on you
2 to think about it and to make a proposal tomorrow in terms
3 of the timing for those submissions and I would like to hear
4 what it is that we're going to do tomorrow and for how long
5 with precision so I can plan my day.

6 How long do you want tomorrow for closing?

7 MR. MILLER: Your Honor, Ralph Miller again.

8 We've really been trying to follow the order, we
9 believe, Your Honor, and we were allowed an hour for our
10 closing.

11 THE COURT: Okay.

12 MR. MILLER: And you had indicated that you would
13 like to have it be a question and answer question. We
14 certainly support that.

15 THE COURT: Okay.

16 MR. MILLER: We think that would be helpful. We
17 don't know how long the question and answer might take --

18 THE COURT: Right.

19 MR. MILLER: -- but as far as my closing is
20 concerned, certainly an hour would be sufficient.

21 THE COURT: Okay.

22 MR. MILLER: And what we will try to do, Your
23 Honor, is we are going to try and go through the points --
24 we're not going to repeat the opening, but go through the
25 points that have come up and try to explain why. Frankly,

1 we still believe the stipulation has the answers to the
2 questions, but why we believe there are a lot of digressions
3 and other with issues and why we think they are digressions.

4 THE COURT: That would be very helpful, okay.

5 All right. And on this side of the room,
6 collectively, how much time? Or do you not have any
7 understanding of how much time?

8 MR. SCHAGER: Your Honor, I'm going to give a one-
9 sentence background and one-sentence request, and that is
10 that effectively you're hearing more than one case now
11 unfortunately and that's more clear than it was at the
12 outset because you've got Dover factors in front of you.

13 THE COURT: But that was -- that's the part that's
14 baffling to me because the very premise of this entire
15 elaborate procedure was because Judge Peck said that each of
16 the types of claimants and claimants should have the
17 opportunity to take -- to demonstrate why they don't fit
18 within Enron. So, from the get-go, it was clear that there
19 were different cases.

20 So I don't -- I viewed that as what the task was
21 coming in and I don't think that it's changed and I,
22 frankly, have not heard anything that very much
23 distinguishes any of the claimants. You know, there's the
24 Neuberger Berman and there's the non-Neuberger Berman and
25 that I have not heard -- and you can tell me if you think

1 that one group versus another -- there's a dispositive
2 factual difference that should, you know, push the ruling in
3 one way or the other.

4 And it's not -- you know, some of the witnesses, I
5 think -- or somebody alluded to the fact that there's a
6 conflict because one counsel is representing multiple
7 different types of claimants. This is not a zero-sum gain.
8 If one group of claimants prevails and is not subordinated,
9 that doesn't mean that another group can't. I mean the math
10 here is that if any of these claimants are not subordinated
11 and go up into the pool of general unsecured creditors, then
12 they get factored into that distribution, and given the
13 numbers here, it would affect the percentage distribution in
14 an infinitesimally small amount.

15 So, I mean you are free to argue however you want,
16 with respect to the claimants you represent, all right?

17 MR. SCHAGER: I apologize, Your Honor, if I
18 misspoke. Certainly there are two basic cases because
19 there's a variation in the Neuberger Berman claim.

20 THE COURT: Right. And then there's the RSU
21 versus the CSA.

22 MR. SCHAGER: We all considered conflicts among
23 CSAs and RSUs and commission-based people. We did not feel
24 that we had conflicts to address there.

25 Maybe it would be more accurate to say that you've

1 got four different cases because you've got four different
2 groups of Plaintiffs and you've got four different lawyers,
3 which, of course, leads to five or six different theories in
4 the case or approaches to litigating the case.

5 You refer to our game plan, Your Honor, and I was
6 very sensitive to that because we do have a game plan -- we
7 did have a game plan, and part of our game plan -- this is
8 getting back to how much time we need tomorrow -- part of
9 our game plan was that I would not speak on opening which
10 was a huge disadvantage because I didn't have a chance to
11 introduce the Court to where the witnesses were going and I
12 was the one who wanted to call witnesses.

13 I think I will need an hour tomorrow to wrap
14 things up myself and I have three other law firms, all of
15 whom participated in the opening, who probably need another
16 half hour or more. So I'm suggesting, Your Honor, that we
17 have an hour and a half tomorrow.

18 THE COURT: Well, did these folks agree?

19 MR. SCHAGER: Well, we're here, Your Honor. We
20 haven't had a chance to discuss it.

21 MR. KAPLAN: Judge, I --

22 MR. SCHAGER: Let me qualify that --

23 THE COURT: Mr. Kaplan, how long do you need?

24 MR. KAPLAN: I said I needed, when we were
25 planning this, 15 minutes, subject to the questions that

1 Your Honor might ask.

2 THE COURT: Okay, 15 minutes --

3 MR. KAPLAN: Fifteen minutes is fine.

4 THE COURT: -- subject to my questions.

5 And, Ms. Solomon?

6 MS. SOLOMON: I will need 15 minutes, subject to
7 the questions of Your Honor.

8 THE COURT: Fine, all right.

9 So, then, Mr. Schager -- yes?

10 UNIDENTIFIED SPEAKER: Your Honor, James Boyagen
11 (ph) would like to request ten minutes.

12 THE COURT: Okay. Ten minutes.

13 So why is that, Mr. Schager, you need an hour if
14 these folks all need 15 minutes? Why do you need an hour?

15 MR. SCHAGER: Because we're saying different
16 things, Your Honor.

17 THE COURT: I understand that. But they didn't
18 say --

19 MR. SCHAGER: And for one thing, I think if
20 Mr. Miller is requesting an hour and I didn't say a word --

21 THE COURT: Mr. Miller has to address everything
22 that each of your group says, so 15 minutes and 15 minutes
23 and 10 minutes and you can have half an hour. That means an
24 hour and ten minutes on one side and an hour on the other
25 side -- a half an hour, subject to my questions, net of my

1 questions.

2 MR. SCHAGER: If that's the Court's order, Your
3 Honor, then --

4 THE COURT: I think that it's more than adequate.
5 We have gone on for two whole days when the entire case of
6 the claimants, by agreement, a stipulation that you were the
7 architect of, called for three hours.

8 I will take the risk on appeal if the decision is
9 not in your favor that you will convince an appellate court
10 that you were denied your due process. I think half an hour
11 is more than generous, net of my questions, all right?

12 So if you would please endeavor to curtail your
13 hour-long presentation to half an hour, I would appreciate
14 it, all right?

15 MR. SCHAGER: I'll act in accordance with the
16 Court's order, Your Honor.

17 THE COURT: Okay, thank you.

18 Mr. Miller?

19 MR. MILLER: Yes, Your Honor.

20 I regret to bring up an unpleasant subject, but
21 Mr. Carriger (ph) yesterday reserved ten minutes for
22 himself. He's not --

23 MR. KAPLAN: He e-mailed this morning and
24 withdrew.

25 THE COURT: And he withdrew.

1 MR. MILLER: Okay, great.

2 THE COURT: So we're at ten minutes, fifteen
3 minutes, fifteen minutes, and a half an hour.

4 MR. MILLER: All right. Your Honor, my only
5 question is: I wonder if there's any chance, since I have
6 no idea and I believe they have no idea what is going to be
7 said in all of this period of time, if I might take ten
8 minutes of my one hour and hold it in rebuttal?

9 THE COURT: Yes.

10 MR. MILLER: So I will take 50 minutes of closing
11 and then hold ten minutes of my one hour --

12 THE COURT: Right. And all net of any --

13 MR. MILLER: -- and not having any net increase in
14 time, but be able to perhaps --

15 THE COURT: Right. But -- and all net of
16 questioning that I ask, which I will try to keep to a
17 minimum.

18 MR. MILLER: Yes, sir.

19 THE COURT: All right.

20 MR. KAPLAN: So tomorrow is deal with the
21 exhibits --

22 THE COURT: Yes.

23 MR. KAPLAN: -- and then submissions?

24 THE COURT: Right.

25 But deal with the exhibits in the since of that

1 takes five minutes because you're just going to tell me what
2 it is that you are moving admission into the record of the
3 trial, okay?

4 MR. KAPLAN: Yes.

5 THE COURT: Okay?

6 MR. MILLER: Yes.

7 THE COURT: Thank you very much. Get some rest.

8 Please, also, if you have a chance, work out the
9 schedule for post-trial submissions, all right. There are
10 different options, you all know this. They can be
11 simultaneous or they can be responsive. One side can go
12 first and the other side can reply.

13 I will defer to however you folks want to proceed.
14 If you can't agree, we can talk about it tomorrow, okay?
15 Okay, thank you.

16 (Proceedings concluded at 5:00 PM)

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C E R T I F I C A T I O N S

I, Dawn South, certify that the foregoing transcript is a
true and accurate record of the proceedings.

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I, Sheila G. Orms, certify that the foregoing is a correct
transcript from the official electronic sound recording of
the proceedings in the above-entitled matter.

Signature of Approved Transcriber

I, William Garling, certify that the foregoing transcript is
a true and accurate record of the proceedings.

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